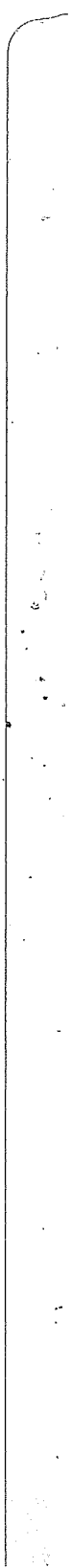


**Anahola Solar Project**  
**Submittal**  
**to the**  
**Hawaiian Homes Commission**  
**October 17, 2011**

**Made By: Homestead Community Development Corporation**  
**Tax Exempt Arm of**  
**Anahola Hawaiian Homes Association**  
**P.O. Box 646**  
**Anahola, HI 96703**

HHC Item No. F-3  
Exhibit A  
Date 10-17-11

**TESTIMONY**



**Primary  
Submittal &  
HHC  
Authorization**

October 17, 2011

To: Chairman and Members, Hawaiian Homes Commission  
Fr: Robin Danner, President, Homestead Community Development Corporation  
Lorraine Rapozo, President, Anahola Hawaiian Homes Association  
Re: Issuance of License Agreement to HCDC and Kauai Island Utility Cooperative and Issuance of a General Lease to HCDC – Anahola, Kauai

**Recommended Motion/Action**

A. That the Hawaiian Homes Commission (HHC) approve and authorize the Chairman **to issue an exclusive license under HHCA section 207 (c)(1) to the Homestead Community Development Corporation (HCDC) and Kauai Island Utility Cooperative (KIUC)** for the use of approximately 60 acres of Hawaiian Home Lands in Anahola, Kauai, identified as a portion of Tax Map Key No. (4) 4-7-04-2, and shown as the area on Exhibit A, attached hereto, wherein 55 acres will be dedicated to the development, operation, management and maintenance of a solar power plant, with approximately 1 acre of that total dedicated to interconnection facilities to the grid (switchyard and substation). A future request may be submitted on the 5 acres to be dedicated to a service center and renewable energy training site.

This section of the HHCA is the section most commonly used by DHHL to issue non-homesteading lands to nonprofit organizations for public purposes, and to homestead beneficiary organizations for community based economic and community development projects, at low to no cost. It should be noted however, DHHL has also used this section to issue licenses to for-profit entities as well.

HCDC and KIUC are each independently eligible under section 207 (c)(1)(A), as both are nonprofit organizations providing public purpose services, and the project itself serves an extraordinary public purpose. In addition, HCDC is further eligible under section 207 (c)(1)(B), as it is the tax exempt arm of the Anahola Hawaiian Homes Association, controlled by native Hawaiians as described in 207(c)(1)(B).

B. That the Hawaiian Homes Commission (HHC) approve and authorize the Chairman **to issue a general lease under HHCA section 204(2) to the Homestead Community Development Corporation** for the use of approximately 60 acres of Hawaiian Home Lands in Anahola, Kauai, identified as a portion of Tax Map Key No. (4) 4-7-04-2, and shown as the area on Exhibit A, attached hereto, wherein 55 acres will be dedicated to the development, operation, management and maintenance of a solar power plant (including switchyard), and 5 acres will be dedicated to a service center and renewable energy training site. The HHC further approves and authorizes the Chairman to cancel the License described in item A, at such time that a General Lease is executed.

This section of the HHCA is the section other than 220.5, used by DHHL to issue non-homesteading lands to nonprofit and for-profit entities, often for revenue generation to the trust.

C. That the Hawaiian Homes Commission (HHC) approves and authorizes the Chairman **to accomplish item A and item B above subject to the following conditions:**

1. **Purpose:** The site shall be used for constructing solar panels, and other related improvements to generate solar power to be fed onto the Kauai Island Utility Cooperative (KIUC) grid, as



well as other facilities to be used in conjunction therewith on 55 acres of the total 60 acres described.

2. **Term:** The initial term of the License and Lease shall be for 25 years with commencement of revenue on the date the system is placed in service. The Chairman of the HHC shall be authorized to extend the term of the License or Lease for good cause to be shown by the Licensee or Lessee.
3. **Authority of Chairman & Deposit:** Upon approval of the HHC of this submittal, the Chairman shall be authorized to issue the License to HCDC and KIUC, which will allow Licensees to conduct due diligence studies and HRS Chapter 343 compliance followed by site preparation, financing and investment preparation, provided Licensee pays a good faith deposit of \$25,000. Said deposit shall be applied to the rent once the system is placed in service, however, the deposit shall be forfeited if the project is not placed in service within a reasonable time (approximately 18 months) and Licensee fails to provide Licensor with compelling reasons beyond Licensee's control that justifies either an extension or a full or partial refund.

Upon approval of the HHC of this submission, followed by compliance to HRS Chapter 343 by the Licensee, acceptance by the Commission of an Environmental Assessment, and any other requirements including beneficiary consultation, the Chairman shall be authorized to cancel the License and issue a General Lease to HCDC, followed by construction and the solar system being placed into service.

**Revenue & Commencement:** The rent commencement date of either the License or the General Lease for the 55 acre solar project shall be the date the system is placed into service.

The total rent for the 55 acres for the first 10 years, shall not be less than 80% of \$1,008,000 (\$100,800 annually), with 20% dedicated to HCDC under a duly executed Homestead Benefits Agreement (HBA). The total rent for years 11-15 shall not be less than 80% of \$645,165 (\$129,033 annually), a 22% increase, with 20% dedicated to HCDC under a duly executed HBA. The total rent for years 16-20 shall not be less than 80% of \$729,940 (\$145,988 annually), a 22% increase, with 20% dedicated to HCDC under a duly executed HBA. The total rent for years 21-25 shall not be less than 80% of \$825,865 (\$165,173 annually), a 22% increase, with 20% dedicated to HCDC under a duly executed HBA.

Over the life of 25 years, the revenue to the trust and its mission totals \$3.2 million, with the majority of 80% in the amount of \$2.6 million directed to DHHL, and 20% in the amount of \$641,794 directed under a Homestead Beneficiary Agreement, administered by the recognized homestead association, Anahola Hawaiian Homes Association through its tax exempt arm, HCDC. This approach is entirely in keeping with the tenets of the HHCA and the mission of the trust to promote self determination and economic self reliance of homestead organizations.

Number of Years	Total to Trust	DHHL (80%)	HCDC (20%)
Year 1 – 10 (10 yrs)	\$1,008,000	\$ 806,400	\$ 201,600
Year 11 – 15 (5 years)	\$ 645,165	\$ 516,132	\$ 129,033
Year 16 – 20 (5 years)	\$ 729,940	\$ 583,952	\$ 145,988
Year 21-25 (5 years)	\$ 825,865	\$ 660,692	\$ 165,173
<b>Total Rev – 25 years</b>	<b>\$3,208,970</b>	<b>\$2,567,176</b>	<b>\$ 641,794</b>
<b>Avg Annual Revenue</b>	<b>\$ 128,359</b>	<b>\$ 102,687</b>	<b>\$ 25,672</b>

Rent provisions above and beyond the minimum stated herein, such as, but not limited to, annual rent increases and/or option fees, shall be subject to negotiations and established prior to execution of the License or Lease, provided such negotiated rents shall not be less than those shown above nor shall rent for any subsequent year of the License or Lease be less than that for the year immediately preceding. Should the Licensee or Lessee request and be granted an extension beyond the initial 25-year term of the License or Lease, the Chairman of the HHC shall be authorized to negotiate changes to the License or Lease deemed prudent.

4. **Subdividing:** Under the terms of the General Lease, if executed, the Lessee shall be permitted to subdivide the land parcel to separate the 55 acre solar project from the 5 acre service center and renewable training center, with separate revenue terms negotiated and brought to the HHC in 2012 for action.
5. **Sublease:** Under the terms of the General Lease, if executed, the Lessee shall be authorized to sub-lease to KIUC Renewable Solutions One, LLC or KIUC, its co-developer partners to execute leasehold financing transactions to finance the improvements to be made on premises.
6. **Fees:** Licensee and Lessee shall pay a non-refundable processing and documentation fee totaling \$275.00 each, for the license and for the general lease transactions.
7. **“As Is” Status & Residential Prohibition:** The premises shall be rented “as is” and the Licensee and Lessee understands that there are no existing utility services to the site, and further agrees to pay for all the costs of establishing and maintaining utility services to the property and pay for all consumption of utilities on the premises, as may be needed by the Licensee or Lessee.

No residential use shall be permitted on the premises, including overnight camping.

8. **Liability Insurance:** Licensee and Lessee shall purchase liability insurance with a minimum coverage of \$2 million and name the Department of Hawaiian Home Lands as an additional insured.
9. **Real Property Taxes:** Licensee and Lessee shall pay all real property taxes assessed by the County of Kauai for the premises.
10. **Security & Personal Property:** Licensee and Lessee shall be responsible for the security of the premises and all of the personal property of the License and Lessee thereon, and further, shall be allowed to install security fencing for public safety and a security system provided the Lessor has reviewed and approved the type of system to be installed.
11. **Homestead Benefits Agreement:** Licensee and Lessee shall execute a tri-party Homestead Benefits Agreement (HBA) between the Anahola Hawaiian Homes Association, HCDC and KIUC, after the execution of a License, but before the execution of any General Lease. The terms of the HBA may address benefits to the Anahola region of HHCA beneficiaries and/or the larger Kauai community, and should include economic and employment benefits, community development including capacity building and education, as well as philanthropic support of Hawaiian culture, youth and elders.
12. **Regulations & Requirements:** Licensee and Lessee shall comply with all federal, state and county regulations or requirements regarding environmental issues and the safe handling and disposal of toxic or hazardous materials. Licensee and Lessee shall be responsible for

environmental cleanup of any contamination or hazardous materials found on the site that is caused by activities on the premises.

13. **Archeological Sites:** Licensee and Lessee are aware that there may be sensitive archeological sites on the Premises and shall exercise caution when undertaking any disturbance of the existing ground surface. If a suspected archeological site is discovered, Licensee or Lessee shall comply with all governmental requirements for properly handling such discovery. The Environmental Assessment to be performed pursuant to Chapter 343 will explicitly address archeological sites on the Premises.
14. **Attorney General Review:** The License and/or General Lease instruments shall be subject to the review and approval, of the Department of the Attorney General.
15. **Other Standard Terms and Conditions:** Other standard terms and conditions of similar Land Instruments issued by DHHL or other terms and conditions deemed prudent by the Chairman of the Hawaiian Homes Commission.

### **Discussion & Authority**

**HHC Authority** - The authority for the Hawaiian Homes Commission to issue licenses is found in section 207 (c)(1), HHCA, 1920, as amended. The procedure to implement this or similar type licenses is found in Sections 10-4-21 and 10-4-22, DHHL Administrative Rules, 1998, as amended.

The authority for the Hawaiian Homes Commission to issue general leases is found in section 204(a)(2), HHCA 1920, as amended. The procedure to implement this or similar type of lease is found in section 10-4-1, DHHL Administrative Rules, 1998, as amended. With respect to a lease to an eleemosynary organization (nonprofit, which HCDC is), Hawaii Revised Statute 171-43.1, as amended, authorizes the Commission to lease, at nominal consideration or any rental amount the Commission deems appropriate; by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501 (c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended; and on such other terms and conditions as the Commission may determine. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service.

The same DHHL rules permit DHHL, subject to the approval of the commission, to negotiate and consummate the rental rate (or value) of a license or lease, when prudent management does not dictate that the rental rate be established by appraisal.

**About Requesting Parties** – HCDC is a Hawaii nonprofit corporation, tax exempt under the IRS section 501(c)(3), formed in 2009 as the tax exempt community development corporation arm of the Anahola Hawaiian Homes Association (AHHA). AHHA has been a homestead association for the Anahola homestead region since 1982, and recognized by DHHL and the Commission as such for at least 25 years, when DHHL encouraged the unification of homestead associations under the Statewide Council of the Hawaiian Homestead Associations (SCHHA), now known as the Sovereign Councils of the Hawaiian Homeland Assembly. Moreover, DHHL and the Commission, further certified AHHA as a stage 4 homestead association under the Kulia Ika Nuu capacity program in February of 2011, one of the highest ratings available.

The mission of HCDC is to *develop, own or have an interest in, the operation of projects, facilities and assets that are controlled by and benefit homestead associations, communities and the Native Hawaiian people.*

HCDC is a member nonprofit founded by AHHA and other homestead leaders to develop community facilities, nonprofit offices, cultural centers, youth serving facilities, economic development structures and other projects that serve the homestead beneficiaries of the Hawaiian Homes Commission Act. It is governed by a 100% HHCA beneficiary board, with dedicated seats for homestead association officers elected by homestead members.

KIUC is a not-for-profit generation, transmission and distribution cooperative owned and controlled by the members it serves. Headquartered in Līhu‘e, Kaua‘i, Hawai‘i, the cooperative was founded to purchase the formerly investor owned Kaua‘i Electric for \$215 million in a transaction that closed on November 1, 2002. The cooperative serves more than 32,000 electric accounts throughout Kaua‘i, including beneficiary households across Kauai. Committed to reinventing how Kaua‘i is powered, KIUC is aggressively pursuing diversification of its energy portfolio to include a growing percentage of hydropower, photovoltaic, bio-fuel, and biomass.

KIUC is well respected in the electric cooperative community based on a solid track record of community involvement and financial benefit for its members. Since its founding, KIUC has returned almost \$30 million in cash patronage refunds while building its equity capitalization to almost 25% from a beginning balance of zero. Members of KIUC own the utility and had patronage capital account balances of over \$60 million at the end of 2010. Total assets were \$288 million, and operating revenues were \$255 million in 2010. The margins assigned to member accounts in 2010 were \$10 million.

**About Project Structure & License versus General Lease** - HCDC and KIUC are jointly developing an approximately 10 megawatt (MW) AC solar farm, which meets the definition of public purpose intended under section 207(c)(1)(A), since this project will serve the larger public with reduced rates island wide. In addition, it also meets the definition of “other mercantile establishments” under section 207(c)(1)(B) intended for beneficiary organizations. As the commission knows, this approach is a common process and execution of lands to nonprofit organizations and homestead organizations, and even on occasion other types of organizations. For example, DHHL issued a 20 year license to Sopogy under 207(c)(1)(A), a for-profit organization. Another example, DHHL issued a 30-year license to the Nanakuli Hawaiian Homestead Community Association under 207(c)(1)(A), a beneficiary nonprofit organization. We are not requesting any exceptions to be made to the long standing practices of DHHL or the Commission.

As such, HCDC requests the Commission approve and authorize the Chairman to issue an exclusive **license** under HHCA section 207 (c)(1)(A) to the **HCDC and KIUC**, together, for the use of approximately 60 acres of Hawaiian Home Lands in Anahola, Kauai.

A license differs from a general lease, in that it does not enable the parties to transfer rights, for example for the purposes of financing a project, when such financing requires collateralization of site improvements to be made. HCDC is requesting a license first, in order to meet site control of the 60 acres to qualify the project for federal tax incentives which require certain qualifying activities to be initiated prior to December 31, 2011, worth an estimated \$2 - \$15 million dollars, and to enable HCDC and KIUC to conduct an Environmental Assessment.

Upon completion of the tasks and due diligence under the purview of a License to HCDC and KIUC, HCDC requests the Chairman to be authorized by the Hawaiian Homes Commission, to issue a

**general lease** under section 204(2) and HRS 171 – 43.1 for eleemosynary (nonprofit) organizations to HCDC.

**About the Solar Project & Anahola Regional Plan** – HCDC and KIUC have entered into a partnership to pursue the development of a 10MW ground mount solar project on Kauai. For context, the peak power usage on Kauai, is approximately 66MW, making this endeavor a significant project to reduce the dependency of Kauai households on fossil-fuel generated power. Additional context must include the comparable size of this project, which could be one of the largest not only on Kauai, but the entire state of Hawaii.

Our current total cost projections are a maximum of \$70 million dollars to build the solar project on 55 acres. Requests for proposal to construct the facility are due shortly, and the current estimate is a high and conservative cost as the solar project final engineering has not been completed. Our project approach is slightly different from a typical solar project, wherein a privately owned company would develop the project, and seek to sell the power generated to a utility like KIUC under a power purchase agreement. In our case, we are eliminating the privately-owned developer, and acting as our own developer.

Instead of selling the power generated, we intend to reduce the overall cost of power to all rate-payers on Kauai, and passing on any and all savings that we can achieve this way, and through a Homestead Benefits Agreement specifically for the Anahola region.

The Anahola Regional Plan, approved by the HHC, contains a priority of lands to develop a renewable energy project. This project not only fulfills the desire by the Anahola homestead to build a renewable energy project, but also fulfills the goal clearly intended by the overall Hawaiian Homes Commission Act – the dedication of non-homesteading lands to beneficiaries and beneficiary-controlled organizations.

**About Project Capital and Financing** - As many in the industry know, solar projects can have very high capital cost per MW of capacity, which in most projects, requires subsidized capital in the form of grants, tax incentives, or the absolute lowest cost of capital as can be found. The overall source of capital and uses of capital are as follows, though these numbers will vary once firm bids on construction of the project are finalized and final details are executed:

Estimated Cost of Development to Operation – \$70 million

**Short Term Construction Financing:**

National Rural Utilities Cooperative Finance Corporation (CFC) – \$70 million

*3 year term – interim constructing financing, with a commitment to term out to 25 years if term financing below is not deployed*

**Term Financing:**

Debt Capital \$49 million

*25 year term at an anticipated 2.5% interest rate (lower than most sources of capital)*

Section 1603 Federal Tax Grant Program \$12 million

*Cash grant program of 30% of eligible project costs, requiring a minimum of 5% of the total project costs to be expended before the expiration of the grant program on December 31, 2011.*

Hawaii State Tax Grant \$9 million

*Hawaii has a similar program to the federal Section 1603 grant that provides a refundable tax credit in the amount of approximately 70% of \$1,500 per kilowatt of solar facility capacity.*

*An additional subsidy may be available under the U.S. Treasury New Market Tax Credits, in conjunction with an eligible lender.*

The driving factor of moving quickly on site control of the land under a License is the Section 1603 Federal Tax Grant Program, wherein an estimated \$12 million in federal grant funds will be able to flow to Hawaii, to Kauai, and to this solar project. It is an extraordinary opportunity to maximize this free source of capital to our state, and indeed to our trust land areas. The deadline of December 31, 2011 dictates our swift action, and efficient use of time to meet certain criteria to protect the opportunity to bring this project to our trust land community.

**About Land Valuation** – We required KIUC to obtain a market value appraisal on the lands requested in this submission, to ensure an impartial and objective measure of best value. 55 acres has been valued under Agricultural lands status versus Industrial for the solar project alone, and for which this submission is dedicated. 5 acres has been valued under Industrial use versus Agricultural use for the service center and training facility. A copy of the Appraisal is included in this submission. The 55 acres is appraised at \$1,680,000 (agricultural) and the 5 acres is appraised at \$1,575,000 (industrial).

Appraised value sets the equivalent annual rental value of the 55 acres with a 6% rate of return identified by the appraiser as a proper measure. As such, and as shown in the previous section, the base annual land rent is set at \$100,800 for the first 10 years, increases by 22% to \$129,033 annually for the next 5 years, increases again by 22% to \$145,988 annually for the next 5 years, and increases again by 22% for the last 5 years at \$165,173 annually. Total rental revenues over the term, totals \$3,208,970 versus a straight land purchase of \$1,680,000 appraised value.

We know that an industrial land use valuation would significantly increase the appraised value, and subsequently, lease rent. The considerations to establish a floor for the valuation to be agricultural use is based on 5 factors:

1. **As Is** - The lands in question are unimproved in any way, and are being taken “as is”, located in a very rural area of the island, and in an area where practically no industrial infrastructure or activities exist;
2. **Industrial Land Use** - The simple reality is that the Anahola lands being requested are agriculture in nature, and if they are not used for a solar project, these lands would most likely be used for agriculture. Unlike Kalealoa, Oahu where other solar projects are being done on trust lands, the Kalealoa lands are industrial in nature. If a solar project is not done on Kalealoa lands, they are highly suitable for other industrial purposes and most definitely could be marketed to other industrial users.
3. **Land Availability & Economic Reality** - Alternative sites available to KIUC are located in the Wailua and Kekaha areas of the island, both on privately owned agricultural lands. The economic reality is that suitable agricultural lands, valued as agricultural lands are available to be purchased for this solar project.

If we impose an industrial land valuation, then we are essentially pricing our lands out of the project, and rejecting any possibility of this project being built in Anahola on our trust lands. The revenues that can be generated under the land rents total \$3.2 million over 25 years, whereas these lands have generated \$0 revenues since their return to the trust.

4. **Economic Impact to Anahola Homestead** - We want this project in Anahola on our trust lands versus privately owned land in another location on Kauai in order to maximize the

economic impact and partnership opportunities with KIUC in general. Moreover, the homestead economic impact described in the Homestead Benefits Agreement section below provides a direct funding impact of \$15.7 million to the region where homestead beneficiaries are a significant stakeholder and partner, and an additional indirect economic impact of \$40.3 million.

5. **Significant Grid Access** - And finally, by locating this project in Anahola, it will ensure that a utility substation is built in Anahola, serving our homestead and also the north shore of Kauai. A substation will benefit our homestead lands, households and businesses for generations into the future, as we will not be limited by the capacity of the grid on consumer installed renewable energy systems, as is being experienced on other islands.

**Homestead Benefits Agreement** – The terms of our initial Homestead Benefits Agreement (HBA) which will be presented in our community and region, as well as shared across the state with other beneficiary associations in the spirit of consultation during the Licensing phase of this land transaction are as follows:

1. **Predevelopment Costs** – HCDC will be reimbursed for pre-development costs which include staffing and volunteer hours, community outreach sessions, beneficiary consultation and inquiries, project due diligence, research, proposal reviews, and coordination with KIUC, stakeholders, and potential contractors, estimated at 550 hours.
  - a. **Direct Value over 18 Months:** \$ 55,000
  - b. **Value with Economic Impact Indicator of 3.1:** \$ 170,500
2. **Commercial Operation Date Joint Development Fee** - \$150,000 one time commercial operation date (COD) fee, upon operation of the project anticipated to be due and payable in no more than 18 months to HCDC. This COD fee will be directed by HCDC to an Anahola regional project fund, will leverage additional capital requirements for existing HCDC projects and programs underway, and will establish the Anahola beneficiary workforce and employment program.
  - a. **Direct Value over Project Life:** \$ 150,000
  - b. **Value with Economic Impact Indicator of 3.1:** \$ 465,000
3. **Land Lease Value & Revenue Sharing** – The land lease revenue established at fair market value based on a professional appraisal to benefit the purpose of the trust, with 80% to DHHL and 20% to HCDC. As previously stated, 80% to DHHL is \$2,567,176, with 20% to HCDC at \$641,794. This approach assumes that this land issuance is not done under the community economic development project for the region, which are typically issued at gratis by DHHL. HCDC will dedicate these revenues to our Anahola regional project fund and on-going projects.
  - a. **Direct Value over Project Life:** \$3,208,970
  - b. **Value with Economic Impact Indicator of 3.1:** \$1,950,055  
(Calculated only on HCDC portion)
4. **Stakeholder Participation Revenue** - 1% of the gross (not net), equivalent value of power sold at \$200 per MWh which is the standard amount under which three other Power Purchase Agreements have been executed by KIUC with private solar PV project developers, payable to HCDC once the project is in service. This is estimated to average \$34,667 per year for the life of the project, which will be dedicated to one full time staffing position to implement each of the items contained in the benefits agreement, including the educational program, internships,

and employment training services, and to oversee and assist beneficiaries in land stewardship of Kauai trust lands.

- a. **Direct Value over Project Life:** \$ 866,671
  - b. **Value with Economic Impact Indicator of 3.1:** \$2,686,680
5. **O & M Contract Revenue** – Operations and Maintenance contracts will be issued to HCDC or designated affiliates, to perform services including maintenance, inspections, troubleshooting, security and other relevant services. O&M contracts are estimated at \$216,454 annually.
  - a. **Direct Value over Project Life:** \$ 5,411,350
  - b. **Value with Economic Impact Indicator of 3.1:** \$16,775,185
6. **Project Signage** – All signage on the project will indicate the ownership of the land, as Hawaiian Home Lands, provided by the native Hawaiian people, as well as signage on the Anahola Hawaiian Homes Association. Time and material value estimated at \$15,000.
  - a. **Direct Value of over 1 Month:** \$ 15,000
  - b. **Value with Economic Impact Indicator of 3.1:** \$ 46,500
7. **Internships, Fellowships & Employment Training** – HCDC and KIUC will develop and operate entry level to management internships and fellowships for homestead residents, and waitlist beneficiaries, regardless of homestead location or island to broaden experience and workforce goals in the general utility field. Estimate of 5 interns/fellows annually at \$2,000 each in stipends would touch 125 individuals with stipends valued at \$250,000.
  - a. **Direct Value over Project Life:** \$ 250,000
  - b. **Value with Economic Impact Indicator of 1.5:** \$ 375,000
8. **Junior/Senior High School Adjunct Teaching** – KIUC will develop curriculum and teach an adjunct course twice annually on utility operations and renewable energy technologies, including engineering, design, operations and maintenance and finance mechanisms. Subject matter expertise valued at 10,000 for a 2 week course taught twice each year.
  - a. **Direct Value over Project Life:** \$ 20,000
  - b. **Value with Economic Impact Indicator of 1.5:** \$ 30,000
9. **Construction Worker Services** – The estimated one time payroll expense over the 9 month construction period is estimated at \$5.6 million. HCDC will conduct outreach and referrals of Anahola homestead residents to be considered for employment. The benefit of worker income will also have a benefit to the vendors in the Anahola Marketplace. However, the more significant economic impact will be felt island-wide on Kauai.
  - a. **Direct Value over 9 Months:** \$ 5,600,000
  - b. **Value with Economic Impact Indicator of 3.1:** \$17,360,000
10. **Utility Operation & Solar Project Developer Capacity Building** – KIUC will assist and share non-proprietary information with HCDC to build its capacity in all aspects of developing, financing and operating a utility, and a solar project, which may lead to the development of additional renewable projects with HCDC taking on an increased developer role.



11. **Leaders Partnership** – KIUC and HCDC will coordinate a project advisory committee from the homestead community for the life of the project, coordinate an annual executive briefing of KIUC and Homestead executives, and coordinate an annual orientation of KIUC management on the HHCA and Native Hawaiian issues. This aspect of the HBA, will also include opportunities to distribute shared press releases and announcements.
12. **New Market Tax Credit Investments** – Should NMTCs be deployed on the project, the resulting subsidy potential totals \$7 million, of which a portion will be dedicated to and invested in homestead related economic development and affordable housing projects.

HCDC's interest in bringing this project to the trust lands and the homestead community of Anahola, is entirely about self-reliance, beneficiary participation in economic opportunities, economic impact and community development in our region, and maximizing our lands for the purposes of the trust which includes DHHL and the beneficiaries.

Under the initial approach of our Homestead Benefits Agreement, the direct funding estimates are as follows:

HCDC funding for culture, youth, elders & operations (items 1-4):	\$1,713,465
DHHL funding for 80% of land lease revenue (item 4):	\$2,567,176
<i>Subtotal of Funding Impact to Trust Purposes:</i>	<b>\$4,280,641</b>
Homestead business contract potential (items 5-6):	\$5,426,350
Homestead education, job training, internships/fellowships (items 7-8):	\$ 270,000
One Time Construction Worker Payroll (item 9):	\$5,600,000
<b>Total Direct Funding Estimates:</b>	<b>\$15,576,991</b>

The indirect economic impacts of these funding streams are estimated to impact Anahola, East Kauai and the larger Kauai community as follows:

HCDC funding for culture, youth, elders & operations (items 1-4):	\$5,737,235
DHHL funding for 80% of land lease revenue (item 4):	\$0-
Homestead business contract potential (items 5-6):	\$16,801,685
Homestead education, job training, internships/fellowships (items 7-8):	\$ 405,000
One Time Construction Worker Payroll (item 9):	\$17,360,000
<b>Total Indirect Economic Impact Estimates:</b>	<b>\$40,303,920</b>

As shown in the above estimates, we believe that one of the state's largest solar projects, should be located on our trust lands in Anahola, to not only bring revenue to the trust, and to DHHL, but to create economic opportunities and impact in our region.

It should be understood that the above is our baseline content for a project Homestead Beneficiary Agreement. These baseline areas may change, subject to consultation and input from various sources, as well as final execution with our partner, KIUC. We welcome DHHL's input on the content of our initial Homestead Benefits Agreement, and the inclusion of the final executed agreement to be made a part of any license and/or general lease.

## Summary

On behalf of the Homestead Community Development Corporation and the Anahola Hawaiian Homes Association, we respectfully request the Hawaiian Homes Commission approve and authorize the Chairman to execute a License and subject to project progression, a General Lease, at a floor of \$3,208,970 in total ground rental value on 55 acres, with a floor of \$2,567,176 (80%) dedicated to DHHL, unless otherwise determined that this project is deemed to be the regional economic development project for Anahola, thereby executing a gratis or far more nominal land instrument to HCDC, similar to other homestead association organizations.

This submittal, establishes a revenue floor, and an approach that enables HCDC and KIUC to pursue the steps necessary to qualify our Anahola lands and the solar project under the federal tax incentive program, which is the primary time-sensitive component of the project. Essentially, by issuing a license to HCDC and KIUC, we are able to show site control to submit under the federal 1603 program and give a reasonable foundation to expense the required 5% of project costs (\$3.5 million) by the end of the year, and to expend funds completing the Environment Assessment and other costs associated with coordinating this project in the Anahola homestead. The license will also provide the time necessary to finalize rental values, revenue sharing if any between DHHL and HCDC, and our Homestead Benefits Agreement, until the transition of the license to a general lease directly to HCDC is executed in mid 2012.

In summary, this submittal generates **\$4,280,641** in direct revenue shared with DHHL, and another **\$5,426,350** in direct O&M contracts to HCDC or Homestead businesses. The overall economic impact of the dollars that will be expended by this solar project, and re-circulated in our homestead and larger Kauai community totals **\$40,303,920**. And finally, the owners of KIUC, all of us on Kauai, which include our homestead households, will reduce the recovery cost of power by **\$26,000,100** over the life of the project.

As a homestead community and trust, we have an opportunity to fully participate together, in an extraordinary renewable energy project that will most certainly be built on Kauai, with or without us. If on our lands as we propose, it will provide economic and capacity building to our homestead, revenues on lands that have been non-producing, and deliver an island-wide reduction in energy costs and reliance on fossil fuels. Equally important, is the clear message, that Hawaiian land assets are very much a benefit to our own homestead community, to our trust, and can also serve the greater good of our island home. One need not exclude the other.

We respectfully request your approval of this submittal, to give DHHL and HCDC, along with our partner KIUC, the opportunity to move forward and finalize negotiations prior to the December 2011 deadline, which we hope to do before November 30, 2011.

Mahalo.

## HCDC Basis for 80/20 Split with DHHL

If this land request is determined by the commission to be the designated Homestead Economic Development project, wherein the commission and DHHL have approved gratis or very low lease rents to other homestead associations, then the 80/20 approach is not applicable. Instead, the lease rent to DHHL should be based on the precedent set on the issuance of land to Waimanalo, Nanakuli, Laiopua, Makuu and so on, which means that HCDC receives 100% rather than 20% of the land lease revenue potential, and DHHL receives 0% rather than 80%.

If this land request is determined to be a market value revenue producer and economic impact value for the trust, which includes DHHL AND its Beneficiaries, we provide the following basis for a revenue sharing model with established, stage 4 or greater homestead associations that have the financial and organizational capacity commensurate with a project proposal.

### **The New Paradigm – Beneficiary Partnerships on Non-Homesteading Land Use**

We must forge a new way forward at DHHL and the Commission when our lands are being contemplated for full revenue and trust purpose impact (non-homesteading use). We can no longer afford to leave one of our best assets, and best purposes for the trust to exist, on the sidelines – our homestead organizations and our homestead people.

Presently and for the last several decades, the Land Management Division and philosophy of DHHL for lands put to non-homesteading use, is to be a real-estate mogul, focused almost entirely on maximum revenue generation from only land value lease rents, with no stakeholder posture in the revenue generation and other tangible economic benefits of the project improvements to the trust and its people. Furthermore, LMD and DHHL, have sadly, viewed the use of non-homesteading land use, as revenue generation capable for only non-beneficiary interests, and if you are a beneficiary interest, the land has to be free, a hand-out, or worse, not available at all.

This must change, for five (5) powerful reasons that will propel the trust to generate greater revenues than it has ever generated under prior non-homesteading land strategies.

1. **Land Knowledge.** Beneficiaries will ALWAYS know, love and value their lands better and more than any one employee at DHHL, all of which will come and go – beneficiaries will always remain. This is particularly true for neighbor island lands. We are in the best position, even better than salaried land agents, to see opportunities, contemplate revenue opportunities AND economic impact opportunities, as well as to know instinctively, what our people and community can tolerate for non-homesteading purposes. We are also in the best position to coordinate the relationships required to have good and fair business transactions, and most importantly to develop great Homestead Benefit Agreements. Good business is not about force or double dealing, or crafty negotiations. Good business is about good relationships, for every deal at hand, and every potential deal in the future with those same folks.

**An 80/20 revenue sharing for homestead associations on non-homesteading land transactions in their region is a sound and more than fair approach for DHHL. You will receive the full benefit of the land knowledge of beneficiaries in that region.**

**The number of quality deals to consider will increase. The amount of time to put a deal together will decrease. The cost of DHHL putting deals together will decrease. Put us in the game as DHHL's partner on the ground.**

2. **Speed & Kuleana.** Beneficiaries are able to move far more quickly than DHHL will ever be able to move. This is a fact that DHHL can do very little about. It is a government agency, with all of the trappings of a government agency, and will ALWAYS be a government agency. Be a government agency! Meanwhile, partner with Beneficiary Organizations that can move quickly, can find deals, contemplate, research, identify barriers and opportunities, speak freely with industry experts and produce comparables and proposals to bring to you, just as the private sector moves quickly in these areas. Beneficiary Organizations are the equivalent of the Private Sector that DHHL may want to be, with one very important advantage that heretofore has been left on the sidelines: Beneficiary Organizations are tied to DHHL's future and success no matter the circumstance. We are friend, not foe to DHHL.

We can add knowledge, not take away from it. We can add solutions when we are a full partner. We can be barriers on every deal that we are forced to watch DHHL take away our land for homesteading purposes to deploy into non-homesteading use, that brings revenues to DHHL, that may or may not be spent well. That will always be a truth. DHHL can get around this truth occasionally, through the relationships of certain staff at DHHL with certain beneficiaries. But the odds increase to finding solutions, putting good deals together, and reducing barriers, the more beneficiaries are full partners, and the more DHHL embraces a philosophy of open partnership.

If a misstep is made by a Beneficiary Organization and DHHL in a deal, it's our misstep, not DHHL's alone, not the Commission's alone. Said another way, we are just as capable of making good or poor decisions about our lands, as any DHHL employee is. There is no downside to adding our good or poor manao to the deal. In fact, it is the foundation of self-determination. We, the people, want to make our own mistakes, and make our own successes.

**An 80/20 revenue sharing for homestead associations on non-homesteading land transactions in their region is a sound and more than fair approach for DHHL. You will incentivize beneficiaries in any given region, to identify potential projects, and to do the work to explore feasibility.**

**The number of quality deals to consider will increase. The amount of time to put a deal together will decrease. The cost of DHHL putting deals together will decrease. Put us in the game as DHHL's partner on the ground.**

3. **Revenues & Value Beyond Land Rent.** Beneficiary Organizations can more efficiently and more effectively, position a non-homesteading land transaction to receive revenues or tangible benefits beyond just land rent value. Unlike DHHL, we are best positioned to be an asset contributor, equity investors, equity owners, or revenue sharing partners on the IMPROVEMENTS on the land. DHHL is simply not. We can tap into assets and capital sources that DHHL simply cannot – whether that is lower cost financing, grants or tax credits, or from a very broad pool of intellectual knowledge. In addition, we are able to

reduce the actual cost of DHHL's operating costs, by doing beneficiary consultation and related functions by having project costs paying for that service.

**An 80/20 revenue sharing for homestead associations on non-homesteading land transactions in their region is a sound and more than fair approach for DHHL. You will be advancing a more robust and full view of the revenue opportunities to tap into, including equity and/or revenue sharing on revenue generated on vertical improvements over just the land.**

**The number of quality deals to consider will increase. The amount of time to put a deal together will decrease. The cost of DHHL putting deals together will decrease. Put us in the game as DHHL's partner on the ground.**

4. **Fulfillment of the Entire HHCA.** The HHCA was always intended to issue land for homesteading, OR issue non-homesteading land for commerce and well-being to beneficiaries FIRST, then all others. People can hate this truth, but it is there. Section 204 and Section 207 are NOT accidents. They are very much a part of a national trust practice, that reaches beyond Hawaiians, with an even longer history and practice on Tribal and Indian lands.

The equivalent land trusts established for American Indians and Alaska Natives can be found in the 1906 Indian Allotment Act, and numerous land claim settlements. The trust agent for these trusts is the federal government. Not a single one of these trusts has been managed by taking Indian trust lands and leasing it to non-Indians to generate revenue for the federal government. Every one of these trusts is administered, by issuing homesteads to Indians, or issuing allotments to Indians, or issuing lands to Native organizations for individual, community or commercial use.

The federal government is funded to do its fiduciary duty from government funds. It is not funded by the very trust lands it is charged to distribute to Indians themselves, for residential, for ranching, for farming or for commerce.

Indeed, our HHCA was set up with the same intent. In fact, as you know from your briefings on the Nelson case, the state government was intended to administer our trust lands in the very same way, and was given free ceded lands to do so, as well as the valuable status it has benefited from as the 50<sup>th</sup> state. With trust agents over the last 90 years in the territory and the state of Hawaii, having very little experience in Native trust asset management in the rest of the country, the trust has a history of well documented mismanagement, documents that are state and federal government studies.

Our trust lands are first for homesteading. And if not for homesteading, section 204 is clear; our lands can be provided to the general public *PROVIDED they are not sold or disposed of in fee simple except as authorized under section 205 and further PROVIDED that the department is expressly authorized to negotiate, prior to negotiations with the general public, the disposition of lands or any improvements thereon to native Hawaiians.* This section covers general leasing of our lands for non-homesteading purposes with a clear goal. Section 207 provides language that clearly states ONLY native Hawaiians may receive licenses for mercantile establishments and such.

The HHCA, in total, has laid out a land distribution program that awards lands to its beneficiaries for homesteading, AND when not used for homesteading, for commercial purposes. Administrations of the last 50 years, have almost entirely ignored the commercial lands intent of the HHCA to beneficiaries, and indeed, went further, to begin a systematic program of leasing commercial lands to only generate revenue for DHHL.

**An 80/20 revenue sharing for homestead associations on non-homesteading land transactions in their region is a sound and more than fair approach for DHHL. You will be advancing the intent of the HHCA in its full spirit, and we believe revenues will increase to DHHL as a result.**

**The number of quality deals to consider will increase. The amount of time to put a deal together will decrease. The cost of DHHL putting deals together will decrease. Put us in the game as DHHL's partner on the ground.**

5. **Building and Sustaining Homestead Capacity.** Capacity is mostly a function of resources. If you have resources, and use them wisely, you buy capacity by paying and employing talented staff, Hawaiian or non-Hawaiian. DHHL criticizes homestead organizations for a lack of capacity, yet DHHL has done very little in its 50 year history to build capacity through actively partnering with and/or contracting to these organizations. In fact, it is common that DHHL will pay any one else, to perform functions, while at the same time expecting beneficiary organizations to do everything for them as volunteers.

Just as DHHL's capacity is a function of the resources available to dedicate to quality staff and partnerships, so it is for beneficiary organizations. The main difference is that DHHL has been uninhibited in spending our trust fund resources, wisely or unwisely, and without meaningful beneficiary input.

**An 80/20 revenue sharing for homestead associations on non-homesteading land transactions in their region is a sound and more than fair approach for DHHL. You will be promoting the capacity of homestead associations without grants, but instead through meaningful partnerships and revenue sharing.**

**The number of quality deals to consider will increase. The amount of time to put a deal together will decrease. The cost of DHHL putting deals together will decrease. Put us in the game as DHHL's partner on the ground.**

Our approach described in this submittal, and indeed in the 80/20 split, creates a new way forward. It recognizes and maximizes the value and reduced expense to the trust, when beneficiaries on the ground, are engaged in land use, land deals and land management decisions.

The Anahola solar project is an example where DHHL will receive \$2.5 million without having spent any trust resources to earn it. It did not require a single plane ride or per diem for an Oahu land agent to come to Kauai, it did not require DHHL to pay for an appraisal, it did not require a capacity building grant to our homestead organization, nor did it require any DHHL staff hours to put a complex proposal into a comprehensive format.

Meanwhile, HCDC did all the work, all the heavy lifting, for 20%. Without the HCDC beneficiaries, this deal would simply not be possible to even be considered, given the timelines required for it to be viable. DHHL simply could not have invested the level of urgency required to hit the deadlines that the private sector has to live by. Therefore 100% of nothing would have been nothing. Due to a partnership with HCDC, DHHL has the opportunity to consider 80% of \$3.2 million. The plus on this new reality, is that DHHL also gets to hit its mission of benefiting the people of the trust through the revenue sharing and the items in the Homestead Benefits Agreement that DHHL would be hard pressed to develop without living and breathing this particular homestead area.

For those that would say, the 15% of commercial lease revenue that is only now, in 2011 being directed to the NHRF fund from DHHL's commercial revenue should be sufficient benefit to a homestead organization - we would say that the 15% set-a-side is absolutely right to do, and ensures that non-homesteading revenues are available for functions and needed projects that can only be accomplished through grant funding. Moreover, this 15% set-a-side ensures that homestead associations and regions have access to capacity building resources when they need it, and regardless of whether the lands in their regions are suitable for an 80/20 transaction.

Said more plainly, the 15% NHRF program is for grants to beneficiary organizations to build their capacity, to deliver community and cultural programs and services in their regions that can only be delivered with grant funds. The 80/20 revenue sharing program is for market rate revenue generating commercial deals, where a beneficiary homestead organization is in the deal, to unleash the potential of established beneficiary organizations to be the land instrument lessee or licensee, to pay market rates, and to bring to the table the added value of Homestead Benefits Agreements that bring benefits to a region well beyond the land lease revenue that DHHL has heretofore been satisfied with. The result – increased land requests from beneficiary organizations that are set at market value, not gratis, when the land use is for non-homesteading large scale commercial use.

Commissioners and Chairman, this proposal more than fairly shares with DHHL, 80% of market land value revenues on a project where a homestead organization put the project together, AND increased the value of the project to the overall trust, through a Homestead Benefits Agreement. It is a win-win-win. Win for DHHL revenue generation – Win for NHRF to support social and cultural organizations statewide – Win for benefits to the homestead region in the vertical improvements.

Our proposal, also represents an opportunity to pilot a new way forward on commercial scale non-homesteading land instruments, where a beneficiary organization is the lessee, is playing a vital role, and has the capacity to do so. It is not a drastic change, yet it is a change that has the potential to change the future of revenue generation and the future of relations between the trust and its beneficiaries. And most definitely, it will change the statistics of the non-homesteading lands portfolio, where HHCA beneficiary organizations are holding more, not less of the non-homesteading lands, as the HHCA and Prince Kuhio intended. The land is the people, it is never – just land.



DRAWING NO.	TITLE	Kaua'i Island Utility Cooperative
SHEET NO.	PROPOSED ANAHOLA SERVICE CENTER	Year Teaching Energy Cooperative
DATE	APPRO'D BY:	Kaua'i Island Utility Cooperative
SCALE	DATE	Kaua'i Island Utility Cooperative
PROJECT NO.	PROJECT NO.	PROJECT NO.



☒ The Garden Island

Co-op would create for-profit LLC to receive tax credits

## KIUC to develop state's largest solar project

Vanessa Van Voorhis - The Garden Island | Posted: Wednesday, October 5, 2011 11:45 pm

LIHU'E — Kaua'i Island Utility Cooperative on Wednesday announced its intent to pursue the development of a 10-megawatt solar farm, which would be the largest of its kind in the state.

"KIUC would have more solar PV concentration (per capita) than any utility in the U.S., if this project can be successfully developed," KIUC CEO David Bissell said in a press release.

The co-op intends to construct the integrated PV and Battery Energy Storage System project by reallocating a \$68 million previously approved loan from Rural Utility Service. RUS had approved the funding for a 10-MW "Gen X" or "CT2" combustion turbine generator.

The co-op also plans to create a new for-profit subsidiary to qualify the solar project for state and federal tax credits. KIUC's Board of Directors last week approved the formation of KIUC Renewable Solutions One, LLC.

KIUC anticipates that up to 50 percent of the cost of the PV portion of the facility will be paid for by taxpayers through the American Recovery and Reinvestment Act. The LLC will be fully owned and controlled by the cooperative, KIUC said.

"KIUC is following a model employed by other electric cooperatives, to use a subsidiary to qualify for tax incentives only available to for-profit companies," Bissell said. "We will combine the tax credits, our own low cost financing, and the declining cost of solar photovoltaic systems to produce energy at significantly less than the cost of power generated from oil. The cost for a KIUC-owned PV facility will also be lower than the recently signed Power Purchase Agreement contracts due to our lower overall cost of capital."

A Request for Proposal to contractors to build the PV facility was released this week.

"We are on a very short timeline to qualify for the federal incentives," Brad Rockwell, KIUC manager of production, said in the release. "With this facility we would have about 20 megawatts of solar PV on our system, and that is why we are integrating the Battery Energy Storage System to handle that level of intermittent resource and still have excellent reliability."

KIUC Board Chair Phil Tachian said there would be "significant" benefits.

"By using the RUS approved funds for solar development, the cooperative effectively shelves the combustion turbine plant and moves closer to giving our members the clean, renewable energy they have asked for," he said.

KIUC says the combustion turbine was originally hoped to be fueled by renewable bio-diesel, but that technology has not developed quickly enough to realistically use the RUS funds in the approved timeframe.

When asked about the location and acres for the proposed project, KIUC spokeswoman Anne Barnes said a few locations are being considered.

"I will let you know when a decision is made," she added.

KIUC engineer Steve Rymsha said in an email that the site should be up to 54 acres for PV and a "land lease is under negotiation."

A KIUC engineering analysis earlier this year concluded that a biomass-fired boiler at the Port Allen Generating Station would be more costly than a solar PV facility, the release states.

Solar prices in free fall

Manufacturers have been slashing the prices of solar panels as supply vastly outweighs demand. The average wholesale price of solar panels fell 37 percent to reach \$2.4 per watt from 2008 to 2010, according to a Lawrence Berkeley National Laboratory report released last month. Prices have declined by approximately 25 percent since the beginning of this year alone.

A significant trigger of the demand-supply imbalance was the end of government subsidies for solar projects in European countries, such as Italy and Germany.

The news of KIUC's project comes one week after an Alexander & Baldwin community outreach meeting to discuss its plans for what would have been the largest solar farm on the island — a 6-MW facility on 20 acres of A&B land near KIUC's Port Allen power generation plant. The A&B plan, estimated to cost \$25 million, received positive community feedback at the meeting, which was also attended by KIUC staff.

Second highest rates in

the country

The lowest effective KIUC electric rate for October is 42 cents per kWh, the second highest in the country after Lanai at 43 cents.

Of Hawai'i's \$63 billion GDP, 7.5 percent is spent on fuel and 10 percent is spent on food, according to a July report by energy analyst David Fessler. Some 90 percent of the state's energy comes from generators fired by oil imported from the Mainland. The average price of electricity in the Aloha State is 36 cents per kWh, the highest average in the country.

KIUC is actively trying to expand its portfolio of renewable technologies. It has signed Power Purchase Agreements for pending solar and biomass-fired projects totaling 17 MW.

"Approximately 35 megawatts of low-impact hydropower projects are being studied, but KIUC has not determined whether additional clean, renewable hydropower can be feasibly developed on Kaua'i," a KIUC press release states.

The state has mandated the islands transition to 40 percent renewable energy by 2030. KIUC's goal is 50 percent renewable by 2023.

"If we are able to develop additional low-impact, clean hydropower later this decade, we will get there ahead of schedule," Tacbian said.

PUC approves KIUC smart grid project

In other KIUC news, the Public Utilities Commission has approved KIUC's request to commit \$11.9 million in funds to participate in a national smart grid demonstration project. The project includes the installation of 33,000 smart meters across the island.

Half of the project's cost will be taxpayer-paid through American Recovery and Reinvestment Act stimulus funding.

KIUC will begin installing smart meters at every home and business early next year, as well as related infrastructure. The installation-phase of the project is expected to take two years to complete.

The co-op plans to hold informational meetings from 6 to 7 p.m. on Oct. 26 and Dec. 8 at KIUC's main conference room at the Hana Kukui building, 4463 Pahe'e St., Lihu'e.

• Vanessa Van Voorhis, staff writer, can be reached at 245-3681 (ext. 251) or by emailing [vvanvoorhis@thegardenisland.com](mailto:vvanvoorhis@thegardenisland.com).



PO Box 646  
Anahola, Hawaii 96703  
Tel: 808.820.8029  
info@ahha96703.org  
www.ahha96703.org

October 8, 2011

Mr. Alapaki Nahale-a  
Chairman, Hawaiian Homes Commission  
91-5420 Kapolei Parkway  
Kapolei, HI 96707

Aloha Chairman:

My name is Lorraine Rapozo. I am the elected President of the Anahola Hawaiian Homes Association (AHHA). I have lived in our homestead since 1986, where I raised my children and most of my grandchildren.

AHHA has existed since 1982. Our association membership consists of homestead lessee families from the very first residential developments in the "village", to farm lot lessees, to the newest Piilani Mai Ke Kai subdivision. We are indeed regional in focus, and inclusive of all facets of our Anahola Homestead region.

In the last 10 years, we have greatly grown in our capacity on every level, whether internal organizational structures to governance to extensive homestead partnerships and programming.

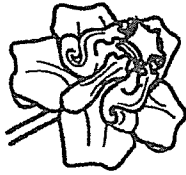
We achieved this growth through the commitment of our homestead Board of Directors and members, and the development of our AHHA Strategic Plan in 2003. Each year, we update this plan, to guide and direct our activities - it has served us well.

In 2009, AHHA incorporated our 501c3 nonprofit, the Homestead Community Development Corporation (HCDC). As the Commission knows, DHHL has been leading the call for the last 5 years, for our homestead associations to either become 501c3 tax exempt or to create 501c3 tax exempt arms. We did so.

For the record, AHHA is the longest standing homestead association with democratically elected leaders in the Anahola Homestead that includes every category of beneficiary lessee (residential, agricultural and pastoral). We have been a member of the Sovereign Councils of the Hawaiian Homeland Assembly since 1987. As such, I am the current Mokuuni President, and Kauai representative on the SCHHA executive board. Prior Kauai Mokuuni Presidents include Aunty Judy Stewart, Robin Puanani Danner, and Leah Perreira.

AHHA is also the only homestead association that owns and operates multiple assets put into service to the entire homestead community, and the larger East Kauai community.

*Our Place for Home, Family, Future*



We own a debt-free, outdoor marketplace developed with investments of more than \$500,000. We own, debt-free, two public facilities developed with more than \$250,000 in capital, where foreclosure prevention, recycling, solar services and community internet services are available.

Under development, we are working on a Kumu and Youth Academy on the last available trust land acreage on the ocean in Anahola. We are also intent upon bringing drug-rehabilitation support services, and in creating capital funding strategies for agricultural and pastoral lessees.

Under our Homestead Regional Plan, land use priorities include renewable energy projects. Through our 501c3 arm, HCDC, we are extremely close to bringing a solar project on-line in Anahola, with issuance of land as one of the last remaining pieces to bring this aspect of our Anahola regional to fruition.

Please include in the record, AHHA's strong support for the issuance of trust lands for a solar project co-developed by HCDC and the Kauai Island Utility Cooperative (KIUC).

Mahalo for the opportunity to communicate my support, in my capacity as the AHHA President. My deceased husband, Joseph, and my ohana, are grateful to Prince Kuhio for allowing us to live in this beautiful community called Anahola, and the opportunity to sustain ourselves, and also all beneficiaries.

Malama Pono,

Lorraine Rapozo  
AHHA President

P.O. Box 724  
Anahola, HI 96703  
October 10, 2011

Mr. Alapaki Nahale-a, Chairman  
Hawaiian Homes Commission  
91-5420 Kapolei Parkway  
Kapolei, HI 96707

Aloha Chairman,


Uncle Eddie Kaleiohi and I support our homestead association in pursuing a solar project in our homestead. We especially want our beneficiaries to be involved in the most meaningful way, to make sure the project helps Kauai, but also helps our homestead people.

Our family has lived in our homestead since 1994. We have always been active, whether serving our youth or helping to make sure that our homesteaders are not taxed by Kauai County.

We have also been involved in the regional planning for our lands, and solar was something we put in our plan.

We support our Homestead Community Development Corporation receiving land to do our solar project.

Mahalo,

  
Amanda Kaleiohi

KipuKai KUALI'I  
PO Box 662061  
Lihu'e, HI 96766

October 7, 2011

Hawaiian Homes Commission  
91-5420 Kapolei Parkway  
Kapolei, HI 96707

Aloha Chairman & Commissioners!

I am a Pi'ilani Mai Ke Kai lessee and community organizer. I was awarded my residential homestead lease about five years ago and had been on the waiting list for over twenty years.

My 'ohana has deep roots on Kaua'i, it has always been our home, and since the 90's when my eldest sister obtained her homestead award, the Anahola region is where the future generations of our Kualii 'Ohana are being raised.

I am a county councilman, as well as a board member of the Anahola Hawaiian Homes Association, our regional homestead association. As you know, the homestead areas created under the Hawaiian Homes Commission Act (HHCA), are important communities on Kaua'i. When HHCA beneficiaries are empowered, the decisions we make, and the projects we promote, benefit our beneficiaries, but also the larger Kaua'i community.

In 2009, the AHHA board partnered with the Council for Native Hawaiian Advancement (CNHA), to incorporate an AHHA community development 501c3 tax exempt organization to bring all of our AHHA projects together. That board action, and decision, has led to the kind of capacity intended by the HHCA—development on our trust lands by organizations controlled by HHCA beneficiaries.

Today, we are working on an exciting solar project, one that will impact all of Kaua'i, but as important, led by beneficiaries of the HHCA. We have an opportunity to ensure that renewable energy becomes a meaningful source of energy for the island, and to create economic opportunities for homestead families. I am in strong support and ask that the Commission approve the land request by HCDC. We have a proven track record of developing multiple projects.

Thank you for your consideration.

Me ka ha'aha'a,



KipuKai Kualii

4397 Anahola Road  
Anahola, HI 96703  
October 9, 2011

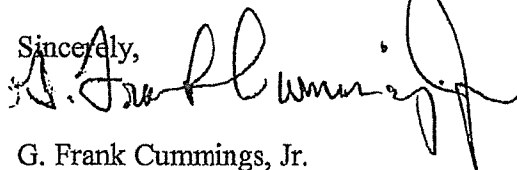
Hawaiian Homes Commission  
91-5420 Kapolei Parkway  
Kapolei, HI 96707

Aloha,

I am Frank Cummings, a homesteader from Anahola since 1970. I have lived my whole life on Kauai, and as a contractor, have always worked with land, building roads, water sources, and renovation work.

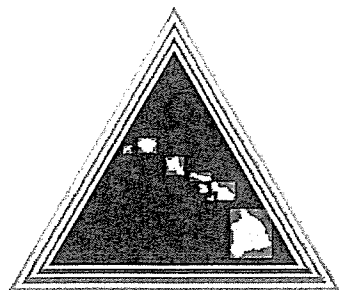
The chance for our homestead organization in Anahola to be a lead in bringing a solar farm to Kauai is a huge opportunity. I ask the commission to support us, by issuing our trust lands so that we can not only do the solar project to create value for the trust, but to keep jobs in our homestead.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Frank Cummings, Jr.", with a large, stylized flourish at the end.

G. Frank Cummings, Jr.

**Sovereign Councils**  
of the



**Hawaiian Homelands  
Assembly**

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1050 Queen St. Suite 200  
Honolulu, HI 96814  
Ph: (808) 529-1627  
Fax: (808) 356-3556

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Kamaki Kanahele  
Chair  
O'ahu

Lorraine Rapozo  
Vice-Chair  
Kaua'i

M. Kammy Purdy  
Secretary  
Moloka'i

M. Kanani Kapuniai  
Treasurer  
Hawai'i

Jared Aiwohi  
Executive Officer  
Maui

Annie Au Hoon  
Executive Director

**October 16, 2011**

**To: Chairman and Members, Hawaiian Homes Commission**

**From: Kali Watson  
Chairman of the Economic and Housing Committee  
SCHHA**

**Re: Hearing on Issuance of License to HCDC and KIUC and General  
Lease to HCDC  
October 17, 2011 at 9:00am  
Kula, Maui**

**TESTIMONY IN SUPPORT**

Dear Chairman Nahale'a and Members:

Thank you for the opportunity to provide testimony in support of this outstanding homesteading initiative by Robin Danner of the Homestead Community Development Corporation (HCDC) and Lorraine Rapozo, President of the Anahola Hawaiian Homes Association (AHHA). At the recent SCHHA's Executive Council quarterly meeting, they unanimously voted in favor of the aforementioned request.

Alternative Energy development is major business. If successful, the proposed 10 MW photovoltaic will be the largest of its kind in the entire State of Hawaii. For the homesteading community of Anahola, Kauai to be a partner and host site in this development presents a rare and exciting opportunity. Not only will it provide significant economic opportunities and benefits, but it will set a tremendous precedent for future community initiated development on Hawaiian Home Lands property. It reflects a new found capacity within the homesteading community, especially from the private sector perspective, and it sets a wonderful precedent for both the Department and the homesteading communities.

The Sovereign Councils of the Hawaiian Homelands Assembly, formerly the State Council of Hawaiian Homestead Associations was founded more than 20 years ago to unite homestead communities and to advocate for the beneficiaries of the Hawaiian Homes Commission Act of 1921. The SCHHA is the oldest statewide advocacy organization representing the interests of 28 homestead organizations (see attached list) and more than 30,000 beneficiaries and families residing in the communities of the Hawaiian Home Land Trust. Its mission is to promote the self determination of native Hawaiians and the well being of homestead communities. What better example than this Project.

I urge you to approve this request by HCDC and AHHA.

Sincerely,

Kali Watson  
Chairman of Economic & Housing Committee



# Sovereign Councils of the Hawaiian Homelands Assembly

## Member Organizations and Association Presidents

1	Audrey Loo	Anahola Hawaiian Lands Farms Association	Anahola	HI
2	Lorraine Rapozo	Anahola Hawaiian Homes Association	Anahola	HI
3	Renee Plunkett	Ha'uoi O Lanai Hawaiian Homestead Community Association, Inc.	Lanai City	HI
4	Tuddie Purdy	Hoolehua Homestead Agriculture Association	Hoolehua	HI
5	Oochie Bush	Hoolehua Homestead Association	Hoolehua	HI
6	Aimuku Pali	Ka Ohana Kahikinui	Kula	HI
7	Sybil Lopez	Kalamaula Mauka Homestead Association	Kaunakakai	HI
8	Richard Soo	Kalawahine Streamside Association	Honolulu	HI
9	Vivian Ainoa	Kamiloloa One-Alii Homesteaders Community	Kaunakakai	HI
10	J. Leilani Wallace	Kapaakea Homestead Association	Kaunakakai	HI
11	Michelle Kauhane	Kaupe'a Homestead Community	Kapolei	HI
12	Van "Kawai" Warren	Kekaha Hawaiian Homesteaders Association	Kekaha	HI
13	Annie Au Hoon	Kewalo Hawaiian Homestead Community Association	Honolulu	HI
14	Lynn De Coite	Molokai Homestead Farmers Alliance	Kaunakakai	HI
15	Renee Montizor	Molokai Homestead Livestock Association	Kaunakakai	HI
16	Kamaki Kanahale	Nanakuli Hawaiian Homestead Community Association	Honolulu	HI
17	Kelly Lincoln	Panaewa Hawaiian Home Lands Community	Hilo	HI
18	Adam Ah Sing	Papakolea Community Association	Honolulu	HI
19	Olinda Aiwahi	Paukukalo Hawaiian Homestead Association	Wailuku	HI
20	Rodney Paahana	Villages of Leialii Association	Lahaina	HI
21	Herbert Hew Len	Waianae Kai Homestead Association	Waianae	HI
22	Lokana Keliikoa-Pua	Waianae Valley Homestead Community Association	Waianae	HI
23	Alapake Heanu	Waiehu Kou I Homestead Association	Wailuku	HI
	Aloha Planesi (Secretary)	Waiehu Kou II Homeowners Association	Wailuku	HI
25	Roy Oliver	Waiehu Kou III Community Association	Wailuku	HI
	Danny Kanahale	Waiehu Kou IV	Wailuku	HI
27	Micheal Hodson	Waimea Hawaiian Homesteaders Association, Inc.	Kaumuela HI	HI
28	Elvin Kamoku	Waiohuli Hawaiian Homestead Association	Kula	HI
29	Richard "Dickie" Nelson	AHHL	Honolulu	HI

## Section II

# Background Data

INTERNAL REVENUE SERVICE  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: JAN 27 2011

HOMESTEAD COMMUNITY DEVELOPMENT  
CORPORATION  
1050 QUEEN ST STE 200  
HONOLULU, HI 96814

Employer Identification Number:  
27-2012662  
DLN:  
600252085  
Contact Person: PAULA J MOLL-MALONE ID# 31262  
Contact Telephone Number:  
(877) 829-5500  
Accounting Period Ending:  
October 31  
Public Charity Status:  
170(b)(1)(A)(vi)  
Form 990-Required:  
Yes  
Effective Date of Exemption:  
June 5, 2009  
Contribution Deductibility:  
Yes  
Addendum Applies:  
No

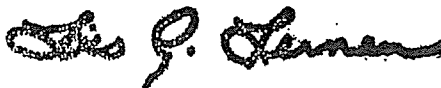
Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. We determined that you are a public charity under the Code section(s) listed in the heading of this letter.

Please see enclosed Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, for some helpful information about your responsibilities as an exempt organization.

Sincerely,



Lois G. Lerner  
Director, Exempt Organizations

Enclosure: Publication 4221-PC

Letter 947 (DO/CG)

**BYLAWS  
OF  
HOMESTEAD COMMUNITY DEVELOPMENT CORPORATION**

**ARTICLE 1 - NAME AND OFFICES**

**SECTION 1. NAME**

The name of this corporation is the Homestead Community Development Corporation.

**SECTION 2. OFFICES**

The principal office of the corporation shall be located in the City and County of Honolulu, State of Hawai'i.

The Board of Directors may change the principal office from one location to another within the State of Hawai'i by noting the changed address and effective date on the Bylaws, and such changes of address shall not be deemed, nor require, an amendment of these Bylaws.

The corporation may also have offices at such other places, within or without the State of Hawai'i, as its business and activities may require, and as the Board of Directors may, from time to time, designate.

**ARTICLE 2 - NONPROFIT PURPOSES**

**SECTION 1. IRC SECTION 501(C)(3) PURPOSES**

This corporation is organized exclusively for one or more of the purposes as specified in Section 501(c)(3) of the Internal Revenue Code, including for charitable and educational purposes.

**SECTION 2. SPECIFIC PURPOSE AND OBJECTIVES**

The purpose of this corporation shall be exclusively for the charitable and educational purpose of developing and facilitating the development of homestead projects and programs that promote economic development, homestead association capacity to own or operate community facilities and other projects located on the lands established under the Hawaiian Homes Commission Act. The corporation shall seek to further this general purpose by engaging in activities that consist of, but are not limited to, the following:

- a) Developing community facilities, including schools, community and cultural centers;
- b) Developing economic development programs and partnerships, including job creation within homestead communities that create economic opportunity for HHCA beneficiaries and/or beneficiary serving homestead associations;

- c) Building the capacity of homestead associations where HCDC provides programming;

## **ARTICLE 3 - DIRECTORS**

### **SECTION 1. NUMBER AND ELECTION**

The authorized number of directors of the Corporation shall be not less than three and not more than nine. Upon the adoption of these Bylaws, the number of directors shall be three. Thereafter, the Board of Directors may change the number of directors upon a majority vote and within the limits set out in this section.

### **SECTION 2. QUALIFICATIONS**

Directors shall be of the age of majority in the state of Hawaii. Other qualifications for directors of this corporation shall be as follows:

- a) 51% or more of the directors must be residents of homestead communities created under the Hawaiian Homes Commission Act;
- b) 51% or more of the directors must be representatives of Homestead Associations within Hawaiian Home Lands where the corporation is pursuing developments, projects and/or programs, or has developed projects and/or programs in that homestead community.

### **SECTION 3. POWERS**

The corporation shall have powers to the full extent allowed by law. All powers and activities of the corporation shall be exercised and managed directly by the Board of Directors. The Board of Directors may delegate the management of the day-to-day operation of the corporation to the President and/or Chief Executive Officer or other person or organization as approved by the Board of Directors.

### **SECTION 4. DUTIES**

It shall be the duty of the directors to:

- a) Perform any and all duties imposed on them collectively or individually by law, by the Articles of Incorporation, or by these Bylaws;
- b) Appoint and remove any officers of the corporation, and employ and supervise the Executive Director of the corporation;
- c) Meet at such times and places as required by these Bylaws;

- d) Register their mail addresses, telephone and facsimile transmission numbers, and electronic mail addresses with the Secretary of the corporation.

## **SECTION 5. TERM OF OFFICE**

Upon the adoption of these Bylaws, the initial directors shall appoint members to fill all vacant seats. Once all vacant seats are filled, one-third of the entire Board of Directors shall be assigned to a three-year term, one-third shall be assigned to a two-year term, and one-third shall be assigned to a one-year term in order to stagger the terms of the directors. Such assignment shall be made by mutual consent or lot. Thereafter, each successor director shall serve for a term of three years.

Successors for elected directors whose terms of office are expiring shall be elected by the Board of Directors. The term of office of a director appointed by the Board to fill a vacancy shall commence at the time of his or her acceptance of the position. A director may be re-elected or re-appointed and serve for an indefinite number of terms.

## **SECTION 6. COMPENSATION**

Directors shall serve without compensation. They shall, however, be allowed reasonable reimbursement of expenses incurred in the performance of their duties.

## **SECTION 7. REGULAR MEETINGS**

The Board of Directors shall set the date, time, and place for the holding of regular meetings of the Directors. Whenever any such regular meetings or meetings shall be so determined, no further notice thereof shall be required. A regular meeting of the Board of Directors shall occur not less than twice each year.

## **SECTION 8. SPECIAL MEETINGS**

Special meetings of the Board of Directors may be called by the President of the Board or at the written request of one-third of the members of the Board of Directors.

## **SECTION 9. NOTICE OF MEETINGS**

The following provisions shall govern the giving of notice for meetings of the Board of Directors:

- a) Regular Meetings. No notice need be given of any regular meeting of the Board of Directors after the Board of Directors has set the date, time, and place for the holding of regular meetings.
- b) Special Meetings. The Secretary of the corporation shall give each director at least 48 hours prior notice of each special meeting of the board. Such notice may be oral or written, may be given by mail, facsimile transmission, electronic mail, or in

person or by telephone, and shall state the place, date, and time of the meeting and the matters proposed to be acted upon at the meeting.

- c) Waiver of Notice. Whenever any notice of a meeting is required to be given to any director of this corporation, a waiver of notice in writing signed by the director, whether before or after the time of the meeting, shall be equivalent to the giving of such notice.

## **SECTION 10. QUORUM FOR MEETINGS**

A majority of the directors then in office present at the meeting of the Board of Directors shall constitute a quorum. No business shall be considered by the board at any meeting at which the required quorum is not present, and the only motion that the Chair shall entertain at such meeting is a motion to adjourn.

## **SECTION 11. MAJORITY ACTION AS BOARD ACTION**

Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the Board of Directors.

Any board action required or permitted to be taken by the Board may be taken without a meeting, if all directors of the board shall individually or collectively indicate action in writing setting forth the action so taken, which written action may be delivered via mail, facsimile transmission or electronic mail. Such written action shall be made a part of the minutes of the proceedings of the board. Such action shall have the same force and effect as the majority vote of the directors.

## **SECTION 12. CONDUCT OF MEETINGS**

Meetings of the Board of Directors shall be presided over by the President of the Board, or, in his or her absence, the Vice President of the Board or, in the absence of each of these persons, by a chair chosen by a majority of the directors present at the meeting. The Secretary of the corporation shall act as secretary of all meetings of the board, provided that, in his or her absence, the presiding officer shall appoint another person to act as Secretary of the meeting. Roberts Rules of Order, as revised from time to time, shall govern the conduct of meetings.

## **SECTION 13. VACANCIES**

Vacancies on the Board of Directors shall exist on the death, resignation or removal of any director, whenever the number of authorized directors is increased, and upon the adoption of these Bylaws and action by the initial members of the Board of Directors to specify the number of directors.

Vacancies on the board may be filled by a majority vote of the remaining directors, even if the majority is less than a quorum. A person elected to fill a vacancy on the board shall hold office until the term expires or until his or her death, resignation, or removal from office.



Any director may resign effective upon giving written notice to the Chair of the Board, the President, the Secretary, or the Board of Directors, unless the notice specifies a later time for the effectiveness of such resignation. No director may resign if the corporation would then be left without a duly elected director or directors in charge of its affairs, except upon notice to the appropriate agency of the State of Hawai`i.

Directors may be removed from office, with or without cause, as permitted by and in accordance with the laws of the State of Hawai`i.

#### **SECTION 14. NONLIABILITY OF DIRECTORS**

The directors shall not be personally liable for the debts, liabilities, or other obligations of the corporation.

#### **SECTION 15. VOTING**

Any director representing an organization that is not in good standing with the laws of the state of Hawaii or with membership with the Council for Native Hawaiian Advancement shall not be allowed to vote on any matter coming before the Board until such time as such member is in good standing.

### **ARTICLE 4 - OFFICERS**

#### **SECTION 1. DESIGNATION OF OFFICERS**

The officers of the corporation shall be a President, a Vice President, a Secretary, and a Treasurer. The President, Vice President, Secretary, and the Treasurer shall be members of the Board of Directors of the corporation.

#### **SECTION 2. QUALIFICATIONS**

Any person may serve as an officer of this corporation, subject to appointment by the Board of Directors.

#### **SECTION 3. ELECTION AND TERM OF OFFICE**

The officers of the corporation shall be elected annually by the Board of Directors. If the election of officers shall not be held at the regular annual meeting, such election shall be held as soon thereafter as convenient. New officers may be elected by the Board of Directors, at any time, and each officer shall hold office until he or she resigns or is removed or is otherwise disqualified to serve, or until his or her successor shall be elected and qualified, whichever occurs first.

#### **SECTION 4. REMOVAL AND RESIGNATION**

The Board of Directors may remove any officer, either with or without cause, at any time. Any officer may resign at any time by giving written notice to the Board of Directors or Secretary of the corporation. Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The above provisions of this section shall be superseded by any conflicting terms of a contract which has been approved or ratified by the Board of Directors relating to the employment of any officer of the corporation.

#### **SECTION 5. VACANCIES**

Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer shall be filled by the Board of Directors. Vacancies occurring in offices of officers appointed at the discretion of the board may or may not be filled, as the Board shall determine.

#### **SECTION 6. DUTIES OF PRESIDENT AND VICE PRESIDENT**

The President shall preside at all meetings of the Board of Directors. The President shall convene meetings and shall conduct such business as shall come before the meeting. He or she shall perform such other duties as may be prescribed by the Board of Directors from time to time.

In the absence of the President, the Vice President shall perform the duties of the President and when so acting shall have all powers of and be subject to all restrictions upon the President. He or she shall perform such other duties as may be prescribed by the Board of Directors from time to time.

#### **SECTION 9. DUTIES OF SECRETARY**

The Secretary shall keep or cause to be kept at the principal office of the corporation or at such other place as the Board may determine, the original, or a copy, of these Bylaws as amended or otherwise altered and a book of minutes of all meetings of the directors, and, if applicable, meetings of committees of directors, recording therein the time and place of holding, whether regular or special, how called, how notice thereof was given, the names of those present or represented at the meeting, and the proceedings thereof.

The Secretary also shall give or cause to be given all notices that are duly given in accordance with the provisions of these Bylaws or as required by law and keep at the principal office of the corporation a record containing the name and address of each and any members.

#### **SECTION 10. DUTIES OF TREASURER**

The Treasurer shall keep and maintain or cause to be kept and maintained, adequate and correct accounts of the corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains and losses, and shall deposit or cause to be deposited all funds in the name of the corporation in such banks, trust companies, or other

depositories as shall be selected by the Board of Directors. The books of account and financial records shall at all reasonable times be open to inspection by any director.

## **SECTION 11. COMPENSATION**

The members and officers of the board shall serve without compensation, unless employed directly by the corporation, at which time, salaries shall be reasonable and given in return for services actually rendered to or for the corporation.

## **ARTICLE 5 - COMMITTEES**

### **SECTION 1. EXECUTIVE COMMITTEE**

The Board of Directors may designate an Executive Committee and may delegate to such committee the powers and authority of the board in the management of the business and affairs of the corporation, to the extent permitted, and except as may otherwise be provided, by provisions of law.

### **SECTION 2. OTHER COMMITTEES**

The corporation shall have such other committees as may from time to time be designated by resolution of the Board of Directors. The resolution forming the committee shall set forth the authority of the committee. Persons who are not also members of the board or the corporation may be appointed to committees and committees may act in an advisory capacity to the Board.

### **SECTION 3. MEETINGS AND ACTION OF COMMITTEES**

Meetings and action of committees shall be governed by, noticed, held and taken in accordance with the provisions of these Bylaws concerning meetings of the Board of Directors, with such changes in the context of such Bylaw provisions as are necessary to substitute the committee and its members for the Board of Directors and its members, except that the time for regular and special meetings of committees may be fixed by resolution of the Board of Directors or by the committee. The Board of Directors may also adopt rules and regulations pertaining to the conduct of meetings of committees to the extent that such rules and regulations are not inconsistent with the provisions of these Bylaws.

## **ARTICLE 6 - EXECUTION OF INSTRUMENTS, DEPOSITS, AND FUNDS**

### **SECTION 1. EXECUTION OF INSTRUMENTS**

The Board of Directors, except as otherwise provided in these Bylaws, may by resolution authorize any officer or agent of the corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances. Unless so authorized, no officer, agent, or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

## **SECTION 2. CHECKS AND NOTES**

Except as otherwise specifically determined by resolution of the Board of Directors, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the corporation shall be signed by the Treasurer or designee or by the President or designee of the corporation.

## **SECTION 3. DEPOSITS**

All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

## **SECTION 4. GIFTS**

The Board of Directors may accept on behalf of the corporation any contribution, gift, bequest, or devise for the nonprofit purposes of this corporation.

# **ARTICLE 7 - CORPORATE RECORDS AND REPORTS**

## **SECTION 1. MAINTENANCE OF CORPORATE RECORDS**

The corporation shall keep at its principal office:

- a) Minutes of all meetings of directors, committees of the board and, if this corporation has members, of all meetings of members, indicating the time and place of holding such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof;
- b) Adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains and losses;
- c) A record of its members, if any, indicating their names and addresses and the category of membership held by each member and the termination date of any membership;
- d) A copy of the corporation's Articles of Incorporation and Bylaws as amended to date, which shall be open to inspection by the members, if any, of the corporation at all reasonable times during office hours.

## **SECTION 2. INSPECTION RIGHTS**

Every director and Category A or Category B member shall have the right, at any reasonable time, to inspect all books, records and documents of every kind of this corporation and to inspect the physical properties of the corporation.

### **SECTION 3. PERIODIC REPORT**

The Board of Directors shall cause any annual or periodic report to be prepared and delivered to an office of the State of Hawai'i or to the members of this corporation as required and within the time frame set by applicable law.

## **ARTICLE 8 - IRC 501(C)(3) TAX EXEMPTION PROVISIONS**

### **SECTION 1. LIMITATIONS ON ACTIVITIES**

No substantial part of the activities of this corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation [except as otherwise provided by Section 501(h) of the Internal Revenue Code], and this corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of, or in opposition to, any candidate for public office.

Notwithstanding any other provisions of these Bylaws, this corporation shall not carry on any activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code.

### **SECTION 2. PROHIBITION AGAINST PRIVATE INUREMENT**

No part of the net earnings of this corporation shall inure to the benefit of, or be distributable to, its members, directors or trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes of this corporation.

### **SECTION 3. DISTRIBUTION OF ASSETS**

Upon the dissolution of this corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of this corporation shall be distributed for one or more exempt purposes within the meaning of Section 510(c)(3) of the Internal Revenue Code or shall be distributed to the federal government, or to a state or local government, for a public purpose. Such distribution shall be made in accordance with all applicable provisions of the laws of the State of Hawai'i.

## **ARTICLE 9 - MISCELLANEOUS**

### **SECTION 1. INDEMNIFICATION OF DIRECTORS AND OFFICERS**

The corporation shall indemnify the directors and officers of the corporation to the fullest extent permissible by Hawai'i law.

## SECTION 2. AMENDMENT OF BYLAWS

These Bylaws may be altered, amended, or repealed and new Bylaws adopted by approval of the Board of Directors.

## ARTICLE 10 - CONSTRUCTION AND TERMS

If there is any conflict between the provisions of these Bylaws and the Articles of Incorporation of this corporation, as filed with the Department of Commerce and Consumer Affairs, State of Hawai'i, the provisions of the Articles of Incorporation shall govern.

If there is any conflict between the provisions of these Bylaws and the applicable laws of the State of Hawai'i, the applicable laws of the State of Hawai'i shall govern. These Bylaws shall be interpreted so that they are consistent with and conform to the applicable laws of the State of Hawai'i. Should any of the provisions or portions of these Bylaws be held unenforceable or invalid for any reason, the remaining provisions and portions of these Bylaws shall be unaffected by such holding.

All references in these Bylaws to a section or sections of the Internal Revenue Code shall be to such sections of the Internal Revenue Code of 1986 as amended from time to time, or to corresponding provisions of any future federal tax code.

Duly adopted by the incorporating board of directors on July 13, 2010

---

Robin Puanani Danner  
CNHA

---

Lorraine Rapozo  
Anahola Hawaiian Homes Association

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Leah Perriera  
Kekaha Hawaiian Homes Association

## **Timeline**

August 9, 2011: HCDC Request Letter of Support to Pursue

August 19, 2011: DHHL Letter of Interest

September 2, 2011: 1<sup>st</sup> Request to DHHL for Right of Entry

September 2, 2011: HCDC Submittal of Standard Land Request Form

September 14, 2011: 2<sup>nd</sup> Request to DHHL for Right of Entry

September 26, 2011: Appraisal Received

September 26, 2011: HCDC Formal Letter for HHC Action

September 30, 2011: Survey Ordered

October 12, 2011: Engineering Procurement Construction Bidders Conference Meeting

October 17, 2011: Hawaiian Homes Commission Meeting

# HCDC

Homestead • Community  
Development • Corporation

**1050 Queen Street, Suite 200 Honolulu, Hawai'i 96814 • 808.596.8155**

August 9, 2011

Chairman Alapaki Nahale-a  
Department of Hawaiian Home Lands  
P.O. Box 1879  
Honolulu, HI 96805

Aloha Chairman Nahale-a:

Enclosed, please find a request for a letter of intent to issue a non-homesteading land license to the Homestead Community Development Corporation (HCDC) for 50 to 70 acres of land from our Kauai land inventory.

HCDC is the 501c3 nonprofit arm of three homestead associations, 1 located on Kauai, 1 on Oahu and one statewide. We are not requesting a license under section 207 of the HHCA at this time. We are requesting a letter of intent, in order to identify appropriate lands either in the Anahola or Kekaha regions of Kauai to develop a solar farm in partnership with Kauai Island Utility Cooperative.

With a letter of intent or a letter of interest from DHHL, HCDC will be in a position to further our discussions, to position capital financing and run profitability proforma, all of which we will share with DHHL.

Mahalo Chairman, for the opportunity to advance the energy priorities of the trust, as well as a land use that directly engages a beneficiary organization as intended under section 207 of the HHCA.

Sincerely,



Robin puanani danner  
HCDC President

cc: Anahola Hawaiian Homes Association  
Association of Hawaiians for Homestead Lands  
Kaupea Homestead Association



NEIL ABERCROMBIE  
GOVERNOR  
STATE OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

P O BOX 1879  
HONOLULU, HAWAII 96805

ALBERT "ALAPAKI" NAHALE-A  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

MICHELLE K. KAUFMAN  
DEPUTY TO THE CHAIRMAN

M. WAIALEALE SARSONA  
EXECUTIVE ASSISTANT

August 18, 2011

Ms. Robin Pualani Danner  
Board President  
Homestead Community Development Corporation  
1050 Queen Street, #200  
Honolulu, HI 96814

Re: Support for the HCDC's Analysis of Kauai Island land for a Renewable Energy Project

Aloha e Ms. Danner,

This letter is to affirm the DHHL's support of HCDC to analyze the trust lands available on Kauai Island for the development of a renewable solar energy project. The DHHL will provide HCDC with access to its maps and its land expertise personnel to support this analysis. If the HCDC is in need of accessing any land parcels for use in its analysis, please contact Linda Chinn, the Land Management Administrator, at 808.620.9451.

This letter of support is not an approval of land use instrument. It is intended to represent the DHHL's support of HCDC's preliminary review, analysis and financial proforma on its potential project. If HCDC decides to pursue a renewable energy project, it must be in alignment with the DHHL's Energy Policy and approved by the Hawaiian Homes Commission.

We look forward to the outcome of your analysis. If you are in further need of support, please don't hesitate to contact us.

Aloha and Mahalo,

A handwritten signature in black ink, appearing to read "Albert Nahale-a".

Albert "Alapaki" Nahale-a  
Hawaiian Homes Commission Chairman

Cc: Land Management Division  
Planning Office

# HCDC

Homestead • Community  
Development • Corporation

**1050 Queen Street, Suite 200 Honolulu, Hawai'i 96814 • 808.596.8155**

September 2, 2011

Mr. Alapaki Nahale-a, Chairman  
Department of Hawaiian Home Lands  
P.O. Box 1879  
Honolulu, HI 96805

Aloha Chairman Nahale-a:

The Homestead Community Development Corporation (HCDC) is in discussion with Kauai Island Utility Cooperative (KIUC), on the development of the single largest solar farm on the island, and potentially in the state. Total capital costs will exceed \$40 million, and is only feasible due to the federal grant and tax credit program that expires for these types of projects on December 31, 2011 (unless extended by the Congress). Essentially, to qualify for the federal funding portion, we must expend 5% (\$2 million) of the total estimated project costs, and have reasonable site control.

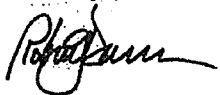
Enclosed you will find a land request on the format developed by CNHA and homestead leaders in 2010 to standardize land requests to DHHL by all parties. All pertinent information is contained. Our request is as follows:

1. For DHHL to issue HCDC an 18-month license at gratis, over which time, HCDC will meet the site control requirements, be positioned to show a \$2 million investment to the federal agency, and beginning in January, complete the project feasibility, negotiate final terms with KIUC, and indeed, include DHHL on our negotiating team for a long term land instrument.
2. At or before the expiration of the 18-month license, for HCDC to receive a long-term license or lease based on the feasibility of the project, wherein DHHL receives a fair land lease rent. At this juncture, HCDC and its partners will deploy the remaining capital investments to develop the project.

Chairman, at this stage, we are requesting a short-term license, or a revocable permit at no cost, in order for HCDC to meet the year-end deadline, and to work on the remaining financing, feasibility and logistics of a renewable energy project, as well as the planning functions to construct a service center building to serve east Kauai. The short term land instrument does not commit DHHL to a long term land instrument, and will only be requested for DHHL consideration if the project is feasible, including satisfactory revenues to DHHL. Otherwise, the land will be returned to the trust inventory.

Thank you for your consideration. Time is of the essence for short-term site control in order to qualify the project for the federal energy grants and tax credits before the end of the year. Should you have any questions, please contact me at 808.596.8155 or on my cell at 808.652.0140.

Sincerely,



Robin Danner  
HCDC President

cc: Lorraine Rapozo, Anahola Hawaiian Homes Association  
Linda Chinn, DHHL Land Management

Enclosures: Land Request Form for Solar Service Center  
Map of proposed Solar Service Center location

## Request for Trust Lands

This application is completed by an interested party in receiving lands dedicated under the Hawaiian Homes Commission Act. HHCA lands are to be used for homesteading purposes for beneficiary native Hawaiians (residential, and agricultural or pastoral), and when necessary, in the best interest of the trust and its beneficiaries, for public purpose, commercial and multipurpose use.

### Section I: Proposed Recipient of Trust Lands

Name of Requesting Organization: Homestead Community Development Corporation

Address of Organization: Headquarters: 1050 Queen Street, Suite 200, Honolulu, Hawaii 96814

### Section II: Type of Organization

☒ Requesting Organization - NonProfit

Type of NonProfit:

- ☐ Private Nonprofit – governed by self appointed board  
☒ Member Nonprofit – governed by voting members  
☒ \*Homestead Association – governed by HHCA beneficiary members

\*Is an HHCA Beneficiary Organization

☒ Yes ☐ No

Mission of Organization: To develop community and economic development projects that serve beneficiaries of the HHCA.

Date Incorporated: 2009

State of Incorporation: Hawaii

Officers and/or Principal Representatives: Robin Danner, President, Lorraine Rapozo, Vice President, Blossom Feiteira, Director.

Capacity Assessed by Kulia Ika Nuu: ☒ Yes ☐ No

Current Capacity and Service to HHCA Beneficiary Community: HCDC is the CDC of 3 homestead associations. HCDC has developed a 10-acre outdoor marketplace and certified kitchen valued at over \$500,000, is under development of a 5 acre Youth Academy in Anahola, a 3-acre, \$400,000 community facility in Kekaha, and is in the preliminary planning stages to develop a service center in Kapolei.

\*Is Democratically Elected by and for HHCA Beneficiaries or a Subsidiary thereof

☐ Requesting Organization – Individual or Business

- ☐ Individual ☐ Sole Proprietorship ☐ Partnership  
☐ Corporation ☐ Limited Liability Corporation ☐ Other

Is an Individual HHCA Beneficiary/is Owned by an HHCA Beneficiary ☐ Yes ☐ No

Date Incorporated: 2009 State of Incorporation: Hawaii

Officers and/or Principal Representatives:

☐ Requesting Organization – Government Agency

- ☐ Federal ☐ State ☐ County



### **Section III: Land Transaction Instrument, Terms & Purpose**

Applicant requests the following land transaction instrument:

- |   |   |                                    |
|---|---|------------------------------------|
| <input type="checkbox"/> Right of Entry     | <input type="checkbox"/> Revocable Permit | <input type="checkbox"/> Easement: |
| <input checked="" type="checkbox"/> License | <input type="checkbox"/> General Lease    | <input type="checkbox"/> Other:    |

**Land Description:** Approximately 65 Acres on the Highway, adjacent to the Anahola Marketplace.

**Term:** 18 Months

**Amount Requested:** Gratis

**Amount Determined by:** ☐ Bid Proposal ☒ Non Bid Proposal ☐ Appraisal

**Amount is Market Value?** ☐ Market Value ☒ Less than Market Value

**Land Use or Purpose:** HCDC requests a short term gratis license for not more than 18 months, to coordinate feasibility analysis, financial commitments, property and project valuations and to negotiate partnership agreements, including the transition of the license to a long term license, subject to negotiated revenues dedicated to DHHL. The land use will be to develop a 50 to 60 acre 10mw solar farm with a sub-station and a 5 acre service center occupied primarily by Kauai Island Utility Coop. The solar farm will require approximately \$40 million dollars in capital expenditures.

**Land Use Benefit to the Trust and/or its Beneficiaries:** This proposed land use, and issuance to HCDC, assists the trust in meeting its obligations under section 207 of the HHCA, wherein licenses for commerce are to be provided solely to beneficiaries and/or beneficiary organizations. In addition, the land use also advances the DHHL priority on renewable energy projects, and will generate revenue to the trust, as well as benefits to beneficiaries through the sustainability of HCDC to advance its mission.

**If Applicant is Not a Beneficiary Organization or a Subsidiary Thereof, Describe How the Applicant is Partnered with Such Organizations:** HCDC is a beneficiary organization, and is controlled and governed by homestead associations.

### **Section IV. Relevant HHCA Sections to Non-Homesteading Trust Land Disposition**

The HHCA addresses non-homesteading public purpose licenses, such as community facilities, commercial or multi-purpose functions, when such purpose supports the overall mission and well-being of the trust and its HHCA beneficiaries.

**Section 207(c)** – This application relates to which of the following four categories under Section 207(c) of the Hawaiian Homes Commission Act:

- ☒ Section 207(c)(1) – Railroads, Telephone Lines, Electric/Utility Lines, Gas Mains, etc; OR
- ☒ Section 207(c)(1)(A) – Churches, hospitals, public schools, post offices and other improvements for public purposes; OR
- ☒ Section 207(c)(1)(B) – Theatres, garages, service stations, markets, stores and other mercantile establishments (all of which shall be owned by native Hawaiians or by organizations formed and controlled by native Hawaiians); OR
- ☐ Section 207(c)(2) – Reservations, roads and other right of way, water storage and distribution facilities and practice target ranges of the United States;

**Section 204(2)** – Lands not required for leasing under 207(a) (homesteading), DHHL is expressly authorized to negotiate, prior to negotiations with the general public, the disposition of Hawaiian home lands or any improvements thereon to a native Hawaiian, or organization or association owned or



controlled by native Hawaiians, for commercial, industrial or other business purposes in accordance to section 171HRS.

- ☒ This Land Request IS made by an \*HHCA Beneficiary Organization.
- ☐ This Land Request IS made by an HHCA Beneficiary individual or business owned and controlled by HHCA Beneficiaries.
- ☐ This Land Request IS NOT made by an HHCA Beneficiary Organization or individual or business owned and controlled by HHCA Beneficiaries.

#### **Section V. Beneficiary Consultation, Applicant Capacity and Land Use Benefit Analysis**

Trust Lands represent a finite amount of land, with thousands of HHCA eligible beneficiaries awaiting an award under the Residential, Agricultural or Pastoral Homesteading program, as well as dozens of Homestead Associations controlled by HHCA Beneficiaries working on homestead based development projects.

As a result, the applicant acknowledges that part of the process of considering applications for trust lands should include the following:

#### **1. Beneficiary Consultation**

- a. A Notice of Request to License/Lease Hawaiian Home Lands for Public Purpose may be sent to all Homestead Community Associations, and HHCA Beneficiary Organizations that have been certified under the DHHL Kulia i ka Nuu capacity program. 20 working days may be available to receive input from beneficiaries of the trust.
- b. All input received may be provided to the applicant, and attached to any submittal on this application to the Hawaiian Homes Commission.

#### **2. Applicant Capacity**

- a. If a Nonprofit Organization – should be assessed by DHHL Kulia i ka Nuu capacity program to determine financial, programmatic, governance and leadership capacity and determine legal structure. Additional information may be required to be submitted to DHHL.
- b. If an Individual/Business – should be assessed by DHHL to determine financial, leadership capacity and legal structure. Additional information may be required to be submitted to DHHL.

#### **3. Land Use Benefit Analysis**

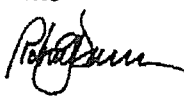
- a. The land requested should have a direct or significant indirect benefit to the trust or to the beneficiaries of the trust. Additional information may be required to be submitted to DHHL.
- b. The land requested should comply with the spirit and intent of Section 207(c) and Section 204(2). Additional information may be required to be submitted to DHHL to determine how Beneficiary Organizations are directly connected to the land request use or in the case of an individual or business, certification of eligibility as an HHCA beneficiary.

The following authorized representative, submits this request for Hawaiian Home Lands:

Homestead Community Development Corporation  
**Print Individual or Organization Name**

September 2, 2011  
**Date**

Robin Danner, HCDC President  
**Authorized Representative Name & Title**

  
**Signature**





Homestead • Community  
Development • Corporation

**1050 Queen Street, Suite 200 Honolulu, Hawai'i 96814 • 808.596.8155**

September 26, 2011

Linda Chinn, Land Management Division Manager  
Department of Hawaiian Home Lands  
P.O. Box 1879  
Honolulu, HI 96805

Aloha Linda:

The Homestead Community Development Corporation (HCDC) is a 501c3 tax exempt Hawaii nonprofit corporation registered in the state of Hawaii since 2009.

We are the community development corporation of the Anahola Hawaiian Homes Association (AHHA), designated at a stage 4 under DHHL's Kulia I Ka Nuu capacity assessment program. As such, HCDC operates a number of beneficiary controlled projects in the Anahola homestead that are either completed or underway. These include a 10 acre outdoor marketplace, a community kitchen for vendor sales, a Kumu and Youth Academy, an afterschool classroom facility, and a potential drug abuse faith-based service program.

Earlier this month, we submitted a short term license request, dated September 2, 2011. Since then, we have firmed up the financing approach, which enables us to request a more definitive land instrument request. This correspondence is to request support for an action item by the Hawaiian Homes Commission (HHC) at the October 18, 2011 meeting to authorize the Chairman to execute a land instrument on 60 acres of Anahola homestead land to develop the following:

1. **Service Center Office Building** - A 5 acre utility service center wherein we plan to construct a \$3 million administrative office building and staging site for utility services for Anahola and east Kauai. Our anchor tenant is the Kauai Island Utility Cooperative.
2. **Solar Project** - A 55 acre ground mount solar project at an estimated project cost of \$50 million to generate 10 megawatts of power to the KIUC grid to assist in achieving higher percentages of renewable versus fossil fuel power sources, and to reduce the overall cost to Kauai Island rate payers, which includes every beneficiary household on Kauai.

We are requesting an interim 2 year license or general lease at gratis, under section 207 of the Hawaiian Homes Commission Act (HHCA), wherein DHHL is authorized to issue land licenses to beneficiary controlled organizations for the purposes of commerce, mercantile and other public benefit purposes or under section 204 wherein DHHL is authorized to negotiate directly with a beneficiary controlled organization prior to the general public.

We further request that this short term land instrument provide for an option to extend to an additional 28 years under negotiated payment terms to be determined in the initial 2 year term, with another option to extend by 35 years. This approach provides the project with a 2 year

window to move from dedicated financing commitments to closing on financing commitments, as well as firming up development costs. In addition, this time frame will be used to finalize the financial modeling to determine overall project revenues and project value, and to negotiate revenue sharing and homestead benefit agreements.

We request the following conditions be specified in the 2 year agreement between DHHL and HCDC:

- 1. Within the 2 year term, HCDC will negotiate a revenue sharing agreement with DHHL from revenues generated on each project.**

Our primary goal is to position trust lands of the project to yield revenues beyond the value of "just" the land, and instead position beneficiary interests as a full stakeholder in the success of the improvements on our trust lands.

HCDC will include the full value of the land into the financial modeling of the solar project, and establish revenue generation to HCDC and DHHL based on the life of the solar project. When our trust lands are utilized for "non-homesteading" purposes, we believe the priorities must be to beneficiary organizations described under section 204 and 207 of the HHCA, and that any revenues should be maximized beyond mere land lease revenue strategies.

- 2. Within the 2 year term, HCDC will negotiate a homesteads benefit agreement with DHHL and AHHA for each project.**

Examples of areas that might be included in such an agreement include operations and maintenance contracting services to local beneficiary firms, providing management internships and fellowships, and delivering educational lectures on renewable energy modeling and financing to Anahola high school students.

- 3. HCDC is authorized to enter into sub-lease or land use agreements to facilitate any capitalization and-or collateralization that HCDC may require.**

Ms. Chinn, this project approach is an excellent opportunity for the commission to pilot and establish best practices in issuing land to beneficiaries under section 204 and section 207 as was intended by the HHCA, while creating beneficial revenue streams to the overall trust.

HCDC has structured our land request to the Hawaiian Homes Commission in essentially 3 phases. Phase 1 is the issuance of a no-cost land instrument to HCDC for up to 2 years. Phase 2 is the execution of an option to extend for 28 additional years subject to satisfactory revenues to the trust purpose and homestead benefits. Phase 3 is the execution of an option for the remaining term of 35 years also subject to satisfactory revenues to the trust purpose and homestead benefits.

Time is of the essence due to a qualifying deadline on \$15 million of the overall \$50 million projected costs for the solar farm. As you may be aware, the Obama administration and the congress established the Investment Tax Credit cash grant program, wherein a renewable energy developer can qualify for up to 30% of total project costs as a direct federal grant. This program expires on December 30, 2011. In order to qualify the Anahola project by the deadline, we must

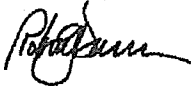
accomplish 2 minimum standards; site location and direct 5% or \$2.5 million toward costs of the project.

We will have an appraisal and a survey on the property available for review on or about September 30, 2011. We would be happy to provide these documents to you, and to discuss any aspect of the project that you may require.

Thank you for the opportunity to request time on the October 2011 commission agenda to request action by the commission to issue 60 acres of Anahola trust lands to HCDC.

If I can provide any additional information, please contact me at 808.652.0140 or via email at [robin@hawaiiancouncil.org](mailto:robin@hawaiiancouncil.org).

Sincerely,



Robin Puanani Danner  
HCDC Board President

cc: Anahola Hawaiian Homes Association



## **Solar Project Source of Capital Summary**

Estimated Cost of Development to Operation – \$50 million

### **Short Term Construction Financing:**

National Rural Utilities Cooperative Finance Corporation (CFC) – \$50 million

### **Repayment of Short Term Construction Loan:**

Section 1603 Treasury Grant Program	\$15 million
Hawaii State Tax Grant	\$10 million
Rural Utility Service	\$25 million

### **About CFC**

National Rural Utilities Cooperative Finance Corporation (CFC) is the electric cooperative industry's private bank founded in 1969 to be a co-lender to the U.S. Department of Agriculture, Rural Utilities Service (which is the successor to the Rural Electrification Administration created by President Roosevelt in 1936 to electrify rural America). CFC is a cooperative bank owned by its member electric cooperatives, has about \$20 billion in loans outstanding to electric cooperatives, and operates on a not-for-profit basis where all margins are assigned back to the owner cooperatives. CFC will provide a construction bridge loan for 100% of the construction cost of the project on a 3 year, interest only, line of credit.

In addition, CFC will provide an option to convert the net debt balance estimated at \$25 million to a 20-25 year, fixed rate term loan in the event that the RUS permanent financing is not feasible. This is powerfully important, as the project is financed completely on day one, with a construction loan and an option to convert to a term loan through a single lender.

### **About Section 1603 Treasury Grant Program**

As a part of the American Recovery and Reinvestment Act of 2009 signed by President Obama in March 2009 (generally called the "Stimulus Bill"), the existing Investment Tax Credit (ITC) can be monetized in a refundable Tax Grant for 30% of the qualifying project costs within 60 days after the commercial operation date. The critical part of the Section 1603 Tax Grant is that 5% of the qualifying cost of the project MUST be incurred on a non-refundable basis through payment for panels, inverters, etc., before December 31, 2011. In order to make this non-refundable capital commitment totaling \$2.5 million, the project must have a site identified and we must file the necessary application with the Hawaii PUC.

### **About State Tax Grant**

Hawaii has a similar program to the Section 1603 Tax Grant that provides a refundable tax credit in the amount of approximately 70% of \$1,500 per kilowatt of solar facility capacity. We estimate \$10 million from this source.

### **About Rural Utility Service Term Loan**

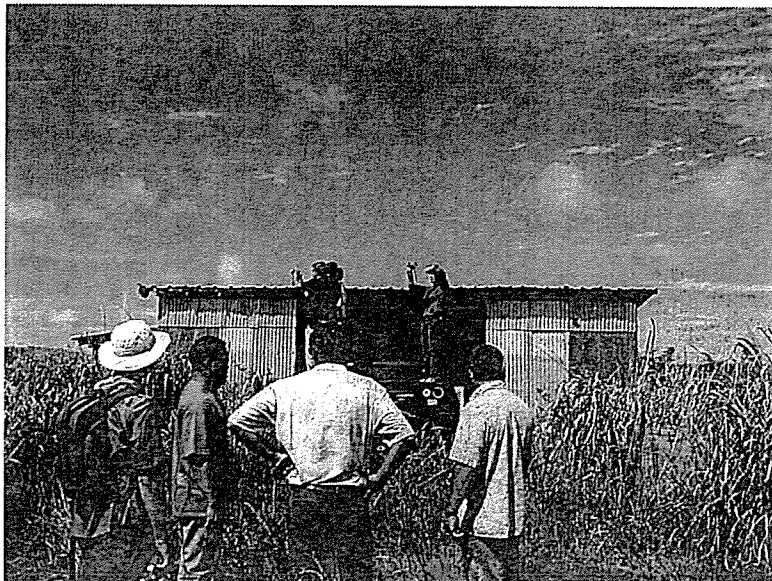
The remaining outstanding balance of the CFC construction loan would be repaid with a fixed rate RUS loan at the federal Department of Agriculture. Interest rates change daily, however to

understand the significance of this source of capital, a 20 year term fixed interest rate was at 2.45% in the last week of September.

### **Summary of Sources of Capital**

Two sources of capital toward the total solar project cost of \$50 million are grants in the amount of \$25 million. The term source of the remainder is a \$25 million RUS loan at extraordinary low costs, creating a weighted cost of capital for the project at 1.7% for 20 years. Solar is a high cost technology where the cost of capital is a vital component to feasibility.

The reality of a CFC interim construction loan and willingness to term that debt over 20-25 years further strengthens the capacity to actually construct and operate the solar project.



**Summary Appraisal Report  
Fair Market Rent and  
Step-Up Rent Analysis  
Proposed Lease of a 60 Acre Site  
Located at  
Kuhio Highway  
Anahola, Kauai, Hawaii  
Identified as Fourth Division,  
Tax Map Key 4-7-04-2 (Portion)  
Effective Date: as of September 21, 2011  
Report Date: September 21, 2011**

**Prepared For:**

**Kauai Island Utility Cooperative  
4463 Pahe'e Street, Suite 1  
Lihue, Hawaii 96766**

# SANFORD D. GOTO, INC.

---

Sanford D. Goto, MAI Real Estate Appraiser and Consultant

September 28, 2011

Kauai Island Utility Cooperative  
4463 Pahe'e Street, Suite 1  
Lihue, Hawaii 96766

Re: Summary Appraisal Report  
Proposed Lease of a 60 Acre Site Located at Anahola, Kauai, Hawaii  
Tax Map Key (4) 4-7-04-2 (Portion)

Gentlemen:

The State of Hawaii, Department of Hawaiian Home Lands ("DHHL") is the fee owner of a 422.150 acre land parcel located at Anahola, Island and County of Kauai, State of Hawaii. The property is identified on the tax maps of the State of Hawaii as Division 4, Zone 4, Section 7, Plat 04, Parcel 2. Kauai Island Utility Cooperative ("KIUC") desires to lease an approximately 60 acre portion of the property. Approximately 5 acres will be used to develop a service center, 1 acre will accommodate a switch yard/substation, and the remaining 54 acres will be utilized as a photovoltaic site.

The proposed lease (the "Lease") will be for a term of 65 years. The proposed rent structure provides for known rents for the initial twenty-five (25) years with scheduled reopenings thereafter. The rent for the initial twenty-five (25) year period shall be fixed for the first ten (10) years with predetermined step-up rent increases at the commencement of the 11th, 16th, and 21st years.

The purpose of the appraisal assignment is to estimate the fair market rent, on a dollar per square foot per year basis, of the 60 acre site for the initial twenty-five (25) year period with predetermined step-up rent increases at the commencement of the 11th, 16th, and 21st years.

Pursuant to client instructions, the valuation is based on a hypothetical CG general commercial district zoning for the 5 acre service center site and the current county agriculture zoning for the 1 acre switch yard/substation and 54 acre photovoltaic site.

KIUC has not determined whether the lease will be for the entire 60 acre site or for only the 5 acre service center site. Therefore, the valuation incorporates: (i) an analysis of the entire 60 acre site based on 5 acres zoned CG general commercial district and 55 acres zoned agriculture; and (ii) an analysis of the 5 acre service center site as a stand alone site based on the CG general commercial district zoning.

The intended use of the appraisal is to assist the client and intended user, KIUC, in connection with planning and decision making purposes with regards to the negotiation of the terms of the Lease. The effective date of the appraisal is September 21, 2011. The date of the report is September 21, 2011.

The appraisal is intended to conform with the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Foundation and Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. The use of the report is subject to the requirements relating to review by duly authorized representatives of the Appraisal Institute.

The Summary Appraisal Report is intended to comply with the reporting requirements set forth under Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice for a Summary Appraisal Report. As such, it presents only summary discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation concerning the data, reasoning, and analyses is retained in the appraiser's file. The depth of discussion contained in the report is specific to the needs of the client and for the intended use stated therein. The appraiser is not responsible for unauthorized use of the report.

Our analyses of the data disclosed by our research and investigation is set forth in the accompanying report.

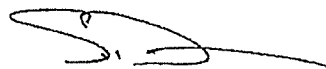
Based on our analyses and conclusions, it is our opinion, subject to the limiting conditions and assumptions contained within the report, that the fair market rent of the 60 acre site to be demised by the Lease for the first ten (10) years of the initial twenty-five (25) year period of the term, as of September 21, 2011, is \$0.0717 per square foot per year, and the step-up rent increases at the commencement of the 11th, 16th, and 21st years are \$0.0918, \$0.1039, and \$0.1176 per square foot per year, respectively.

It is also our opinion, subject to the limiting conditions and assumptions contained within the report, that the fair market rent of the 5 acre service center site as a stand alone site for the first ten (10) years of the initial twenty-five (25) year period of the term, as of September 21, 2011, is \$0.4339 per square foot per year, and the step-up rent increases at the commencement of the 11th, 16th, and 21st years are \$0.5554, \$0.6284, and \$0.7110 per square foot per year, respectively.

We appreciate the opportunity to assist you with this appraisal assignment.

Very truly yours,

**SANFORD D. GOTO, INC.**



Sanford D. Goto, MAI  
President  
State Certified General Appraiser CGA-48  
Certificate Expires: December 31, 2011

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ADDENDA

- EXHIBIT I Subject Property Photographs
  - EXHIBIT II Right of Entry Map dated September 4, 2011 (Service Center, Switch Yard Site, PV Site)
  - EXHIBIT III Right of Entry Map dated September 4, 2011 (Service Center)
  - EXHIBIT IV Chapter 8 Kauai County Code 1987 (As Amended) Comprehensive Zoning Ordinance: Article 5. Commercial Districts
  - EXHIBIT V Chapter 8 Kauai County Code 1987 (As Amended) Comprehensive Zoning Ordinance: Article 7. Agriculture Districts
  - EXHIBIT VI Commercial and Industrial Land Transactions Summary
  - EXHIBIT VII Agriculture Land Transactions Summary
- Professional Qualifications



## I. APPRAISAL ASSIGNMENT

The State of Hawaii, Department of Hawaiian Home Lands ("DHHL") is the fee owner of a 422.150 acre land parcel located at Anahola, Island and County of Kauai, State of Hawaii. The property is identified on the tax maps of the State of Hawaii as Division 4, Zone 4, Section 7, Plat 04, Parcel 2. Kauai Island Utility Cooperative ("KIUC") desires to lease an approximately 60 acre portion of the property. Approximately 5 acres will be used to develop a service center, 1 acre will accommodate a switch yard/substation, and the remaining 54 acres will be utilized as a photovoltaic site.

The proposed lease (the "Lease") will be for a term of 65 years. The proposed rent structure provides for known rents for the initial twenty-five (25) years with scheduled reopenings thereafter. The rent for the initial twenty-five (25) year period shall be fixed for the first ten (10) years with predetermined step-up rent increases at the commencement of the 11th, 16th, and 21st years.

### Purpose

The purpose of this appraisal assignment is to estimate the fair market rent, on a dollar per square foot per year basis, of the 60 acre site for the initial twenty-five (25) year period with predetermined step-up rent increases at the commencement of the 11th, 16th, and 21st years.

Pursuant to client instructions, the valuation is based on a hypothetical CG general commercial district zoning for the 5 acre service center site and the current county agriculture zoning for the 1 acre switch yard/substation and 54 acre photovoltaic site.

KIUC has not determined whether the lease will be for the entire 60 acre site or for only the 5 acre service center site. Therefore, the valuation incorporates: (i) an analysis of the entire 60 acre site based on 5 acres zoned CG general commercial district and 55 acres zoned agriculture; and (ii) an analysis of the 5 acre service center site as a stand alone site based on the CG general commercial district zoning.

### Definitions

Market value is described in the Uniform Standards of Professional Appraisal Practice 2010-2011 Edition, published by The Appraisal Foundation, as:

"a type of value, stated as an opinion, that presumes the transfer of a property (i.e., a right of ownership or a bundle of such rights), as of a certain date, under specific conditions set forth in the definition of the term identified by the appraiser as applicable in an appraisal.

Comment: Forming an opinion of market value is the purpose of many real property appraisal assignments, particularly when the client's intended use includes more than one intended user. The conditions included in market value definitions establish market perspectives for development of the opinion. These conditions may vary from definition to definition but generally fall into three categories:

1. the relationship, knowledge, and motivation of the parties (i.e., seller and buyer);
2. the terms of sale (e.g., cash, cash equivalent, or other terms); and
3. the conditions of sale (e.g., exposure in a competitive market for a reasonable time prior to sale)."

The Appraisal of Real Estate Thirteenth Edition, published by the Appraisal Institute, includes the following definition of Market Value:

"The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress."

The Dictionary of Real Estate Appraisal Fifth Edition, published by the Appraisal Institute, Copyright 2010, defines market rent as:

"The most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the lease agreement, including permitted uses, use restrictions, expense obligations, terms, concessions, renewal and purchase options, and tenant improvements (TIs)."

### **Intended Use**

The intended use of the appraisal is to assist the client and intended user, KIUC, in connection with planning and decision making purposes with regards to the negotiation of the terms of the Lease. The effective date of the appraisal is September 21, 2011. The date of the report is September 21, 2011.

### **Scope of Work**

This appraisal is intended to conform with the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Foundation and Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. The use of the report is subject to the requirements relating to review by duly authorized representatives of the Appraisal Institute.

This Summary Appraisal Report is intended to comply with the reporting requirements set forth under Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice for a Summary Appraisal Report. As such, it presents only summary discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation concerning the data, reasoning, and analyses is retained in the appraiser's file. The depth of discussion contained in this report is specific to the needs of the client and for the intended use stated herein. The appraiser is not responsible for unauthorized use of this report.

As part of this assignment, the appraiser performed the following investigations and analyses:

- \* Obtained a printout of the ownership and assessment information from the County of Kauai's Real Property Assessment Division and conducted research and interviews at the Planning Department.

- \* Reviewed the Right of Entry Map dated September 4, 2011 (Service Center, Switch Yard Site, PV Site) and the Right of Entry Map dated September 4, 2011 (Service Center).

- \* Conducted an inspection of the property on September 21, 2011.

- \* Researched and analyzed transactions involving the sale or lease of commercial, industrial, and agriculture zoned land parcels in the competitive market area.

- \* Researched and analyzed rates of return appurtenant to ground leases for residential, resort, industrial, commercial, and agriculture zoned land parcels.
- \* Consulted with knowledgeable individuals in the Hawaii real estate market.
- \* Developed opinions relative to the assignment.
- \* Reported the opinions to the client by way of a written appraisal report.

### **Limiting Conditions and Assumptions**

The conduct of any appraisal is necessarily guided by, and its results influenced by, the terms of the assignment and the assumptions which form the basis of the study. The following general limiting conditions and underlying assumptions embodied in this report, constitute the framework of the analyses and conclusions.

#### **General Limiting Conditions**

1. This is a Summary Appraisal Report which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice for a Summary Appraisal Report. As such, it might not include full discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation concerning the data, reasoning, and analyses is retained in the appraiser's file. The information contained in this report is specific to the needs of the client and for the intended use stated herein. The appraiser is not responsible for unauthorized use of this report.
2. The appraiser is not required to give testimony or appear in court because of having made this report unless arrangements for such testimony or appearance have been previously made therefor.
3. Possession of this report, or a copy thereof, does not carry with it the right of publication, and this report may not be used by any person or organization except the client without the previous written consent of the appraiser, and then only in its entirety.
4. The out-of-context quoting, partial reprinting, or dissemination of this report to the general public is not authorized without the prior written consent of the appraiser.
5. Disclosure of the contents of this report is governed by the Bylaws and Regulations of the Appraisal Institute. The contents of this report may be divulged in confidence to an authorized committee of the Appraisal Institute. The contents of this report shall not be disseminated to the public through advertising, public relations, news, sales, or any public means of communication without the prior written consent and approval of the appraiser.

#### **General Underlying Assumptions**

1. The legal description used in this report is assumed to be correct.
2. No survey of the property has been performed by the appraiser. Any maps included in this report are intended only for the purpose of showing spatial relationships. They are not measured surveys or measured maps, and the appraiser is not responsible for topographic or surveying errors.

3. No responsibility is assumed for matters of a legal nature. This report is not to be construed as rendering any opinion of title, which is assumed to be good and marketable. No title information or data regarding easements which might adversely affect the use, access or development of the property was found in this analyses other than those referred to herein.
4. Information provided by informed local sources such as governmental agencies, financial institutions, realtors, buyers, sellers and others, was weighed in the light in which it was supplied and verified by secondary means where possible; however, no responsibility for its accuracy is assumed by the appraiser.
5. It is assumed that the property is free and clear of any and all mortgages, liens, encumbrances, leases, and servitudes other than those referred to herein. The property has been appraised as though under responsible ownership and competent management.
6. No engineering tests were furnished or conducted on the property. No liability is assumed for soil conditions, bearing capacity of the subsoil or for engineering matters relating to the property.
7. Full compliance with all applicable federal, state, and local environmental regulations and laws is assumed, unless otherwise stated, defined, and considered in this report. The appraiser has requested information pertaining to the presence of hazardous materials. The existence of hazardous materials, which may or may not be present on or in the site, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the site. The appraiser, however, is not qualified to detect such substances. The presence of hazardous materials may affect the value of the property. The analyses presented herein is predicated on the assumption that there is no such material on or in the site, other than those referred to herein, that would cause a loss in value. No responsibility is assumed for any such conditions or for any engineering knowledge required to discover them.
8. Unless otherwise stated in this report, the valuation is performed without a specific compliance survey having been conducted to determine if the property is or is not in conformance with the requirements of the Americans with Disabilities Act. The presence of architectural and communications barriers that are structural in nature that would restrict access by disabled individuals may affect the value of the property. The analyses presented herein is predicated on the assumption that the property is in compliance with the requirements of the Americans with Disabilities Act, Public Law 101-336, unless otherwise noted.
9. Compliance with all applicable zoning and use regulations and restrictions is assumed, unless a non-conformity has been stated, defined, and considered in this report.

Extraordinary Assumption

1. The analyses is based on the extraordinary assumption that there are no easements, restrictions, or encumbrances, other than those referred to herein, that have an adverse effect on the utility, developability, or marketability of the 60 acre site.

#### Hypothetical Conditions

1. The analyses is based on the hypothetical condition that the 60 acre site or 5 acre site, whichever is leased, is subdivided from the 422.150 acre land parcel as of the effective date of the appraisal.
2. The analyses is also based on the hypothetical condition that the 5 acre site is zoned CG general commercial district as of the effective date of the appraisal.

## II. PROPERTY IDENTIFICATION

### Description

The subject property is located at Anahola, Island and County of Kauai, State of Hawaii, and is identified on the tax maps of the State of Hawaii as Division 4, Zone 4, Section 7, Plat 04, Parcel 2 (portion).

### Census Tract

The subject property is located within the boundaries of Census Tract Number 0402.01.

### Real Estate Assessment and Taxes

According to County of Kauai Real Property Assessment Division records, Tax Map Key (4) 4-7-04-2 is assessed for ad valorem tax purposes for assessment year 2011 as follows:

<u>Year</u>	<u>Land</u>	<u>Building</u>	<u>Total</u>
2011	\$133,900	\$0	\$133,900

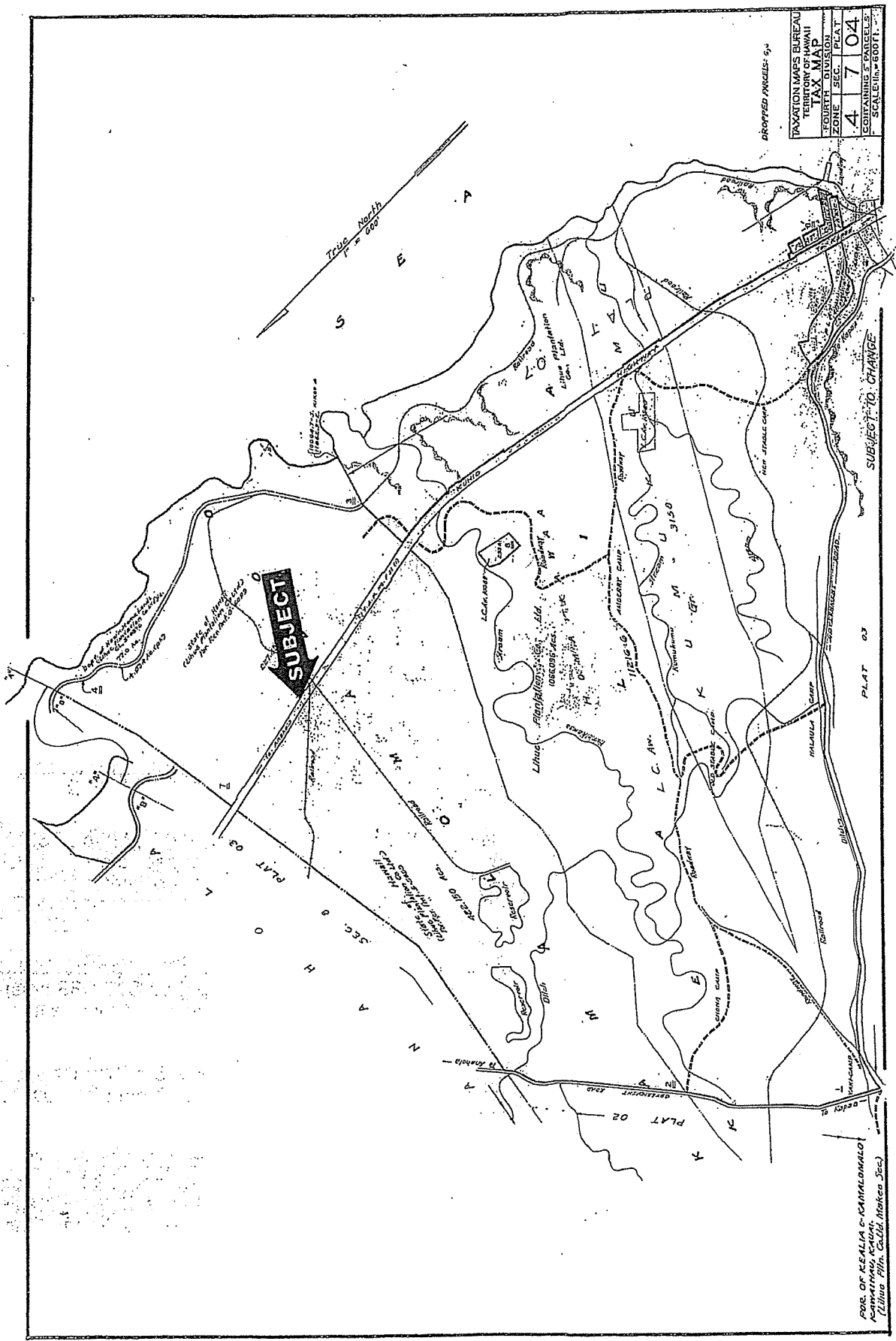
In accordance with the Revised Statutes of Hawaii, real property is assessed at 100 percent of its estimated market value. The State of Hawaii is exempt from real property taxes.

### Owner of Record and Property History

Title to the estate or interest in the land parcel identified as Tax Map Key (4) 4-7-04-2 is vested in the State of Hawaii, Department of Hawaiian Home Lands, as fee owner.

County of Kauai, Real Property Assessment Division records disclose no transaction involving the property over the prior three year period.

# PROPERTY IDENTIFICATION MAP



FOR OF REALIA C-KAMALOMALO  
KAMAMAHU, KAOH  
(Lying 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, 43rd, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 51st, 52nd, 53rd, 54th, 55th, 56th, 57th, 58th, 59th, 60th, 61st, 62nd, 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 73rd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th, 91st, 92nd, 93rd, 94th, 95th, 96th, 97th, 98th, 99th, 100th, 101st, 102nd, 103rd, 104th, 105th, 106th, 107th, 108th, 109th, 110th, 111th, 112th, 113th, 114th, 115th, 116th, 117th, 118th, 119th, 120th, 121st, 122nd, 123rd, 124th, 125th, 126th, 127th, 128th, 129th, 130th, 131st, 132nd, 133rd, 134th, 135th, 136th, 137th, 138th, 139th, 140th, 141st, 142nd, 143rd, 144th, 145th, 146th, 147th, 148th, 149th, 150th, 151st, 152nd, 153rd, 154th, 155th, 156th, 157th, 158th, 159th, 160th, 161st, 162nd, 163rd, 164th, 165th, 166th, 167th, 168th, 169th, 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### III. AREA ANALYSIS

The four forces that influence the value of real estate are: environment (physical); economic; government; and social. These forces are discussed in the following sections of the Area Analysis.

#### County of Kauai

##### Environmental Forces

The County of Kauai legally includes the Island of Kauai, the fourth largest island in the Hawaiian chain, the Island of Niihau, sixth in terms of size, and the two uninhabited Islands of Kaula and Lehua. The County of Kauai encompasses approximately 630 square miles of total geographic area. The Island of Kauai has a total geographic area of approximately 558 square miles of which approximately 549 square miles represent land area. The island has a length of 33 miles and a width of 25 miles at its longest points. Niihau has a total geographic area of approximately 71 square miles inclusive of the Island of Lehua of which approximately 70 square miles represent land area. The island has a length of 18 miles and a width of 6 miles at its longest points. The Island of Kaula has total geographic and land areas of approximately 0.39 square miles.

Lihue is the civic, financial, and cultural seat of Kauai County and the center of business and industrial activity. Located in Lihue are the various governmental agencies, courts, schools, major recreation facilities, and police station. Kauai's major shopping center, Kukui Grove Shopping Center, centralized industrial area, Lihue Industrial Park, and medical facility, Wilcox Memorial Hospital, are located in Lihue. The major areas of commercial development within Lihue have extended along Rice Street and Kuhio Highway. Consistent with its central location, post office facilities, community library, parks, schools (elementary, intermediate, high and community college), churches of various denominations, entertainment facilities, food outlets, and fire station are located in Lihue.

##### Economic Forces

The primary economic activities of the County of Kauai include tourism, agriculture, construction, and the federal government/military.

The State of Hawaii reflected a total visitor arrival count of 6,982,572 during 2010, an 8.8% increase from 2009. International visitors, particularly from Japan, significantly impact the total visitor count. The international visitor arrival count totaled 1,960,018 during 2010, a 12.1% increase from 2009. The domestic visitor arrival count totaled 5,022,554 during 2010, a 7.5% increase from 2009.

The County of Kauai reflected a total visitor arrival count of 963,523 during 2010, a 3.8% increase from 2009. The domestic visitor arrival count totaled 880,313 during 2010, a 2.8% increase from 2009. The international visitor arrival count totaled 83,210 during 2010, a 16.4% increase from 2009.

The hotel occupancy rate for the State of Hawaii during 2010 was 70.7%, a 5.9% increase from 2009. The hotel occupancy rate for the County of Kauai during 2010 was 58.3%, a 1.5% decrease from 2009.

Agriculture is an important component of Kauai's economy. The availability of agricultural land increased with the departure of McBryde Sugar in 1996 and the closure of Lihue Plantation in 2000. Diversified agriculture remains competitive with regards to specialty crops such as coffee, papaya, aquaculture, and range-fed beef.



The contracting tax base, construction activity subject to the general excise tax, during 2010 was 15.8% lower than 2009. Total private building authorizations during 2010 were 0.9% lower than 2009. Government contracts awarded during 2010 increased by 35.8% from 2009.

#### Government Forces

The state general fund tax revenue growth during 2010 reflected a 7.4% increase from 2009. General excise tax revenue increased by 3.6%, net individual income tax revenue increased by 8.5%, and net corporate income tax revenue increased by 44.0% from 2009.

Inflation remains relatively low in Hawaii according to the Honolulu Consumer Price Index (CPI). The index increased by 2.1% from 2009 to 2010.

#### Social Forces

The State of Hawaii total population as of April 2010 was 1,360,301, a 5.0% increase from the total population as of 2009 of 1,295,178. The resident population of the County of Kauai as of 2010 was 67,091, a 4.0% increase from the total population as of 2009 of 64,529.

The total civilian labor force for the State of Hawaii during 2010 was 635,050, a 0.4% decrease from 2009. The unemployment rate during 2010 was 6.5%, a 0.3% decrease from 2009. The County of Kauai's total civilian labor force during 2010 was 31,600, an 1.7% decrease from 2009. The unemployment rate during 2010 was 8.8%, a 0.5% decrease from 2009.

Hawaii's personal income during 2010 increased by 2.2% from 2009.

#### Conclusion

The long-term outlook for the County of Kauai is favorable with respect to economic growth. Tourism will continue to be the leading economic base of the County of Kauai and is considered to be the most significant factor in guiding the development of the economy.

Recent sales of major industrial, retail, office, and resort properties suggest investor confidence in the long-term prospects for Hawaii's economy. Buyer's are represented by a mix of foreign, mainland and local investors. Prevailing real estate market trends indicate the real estate housing market to be in the early stage of recovery.

#### Environs

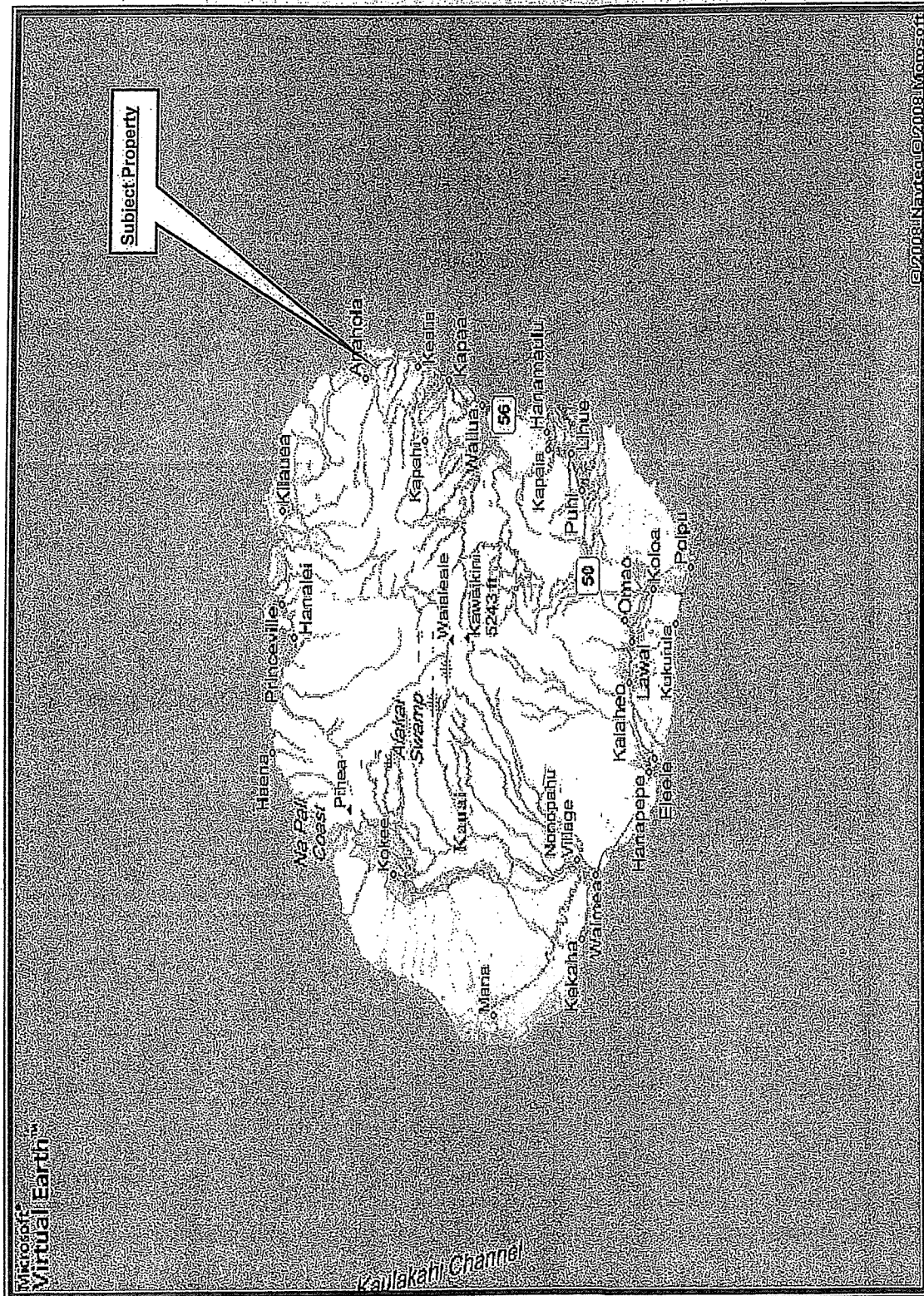
Since real estate is fixed in location, its marketability, utility, and developability are strongly influenced by economic and social trends in its immediate environment. The continuing attractiveness of this neighborhood environment to potential users and tenants, and its competitive relation to those of substitute properties, must, therefore, be evaluated and forecasted by the appraiser. In particular, perceived neighborhood trends affect both the quality and quantity of revenues a property can reasonably be expected to generate.

A neighborhood of income-producing properties is a geographic area characterized by similarity of uses and/or users, within which any change has a direct and immediate effect on a property and its value. The geographic area surrounding the subject property is defined by physical and man-made boundaries and encompasses an area known as Anahola.

Anahola is a rural community located on the northeastern side of Kauai bordered by the districts of Kapaa on the south and Kilauea on the northwest. The subject property is located along the western side of Kuhio Highway in Anahola. Land uses in the immediate neighborhood are predominantly agriculture oriented. A Hawaiian Home Lands residential subdivision is located to the north.

The major thoroughfare facilitating traffic to and from the North Shore is Kuhio Highway, which services traffic between Lihue at the south end and extending in a northerly direction to Wailua, Kapaa, Anahola, Kilauea, Princeville, Hanalei, and Wainiha.

# Map of Kauai



[illegible]

**Subject: Property**  
**(4)4-7-4-2 (portion)**

#### **IV. SITE ANALYSIS**

The subject property is located along the western side of Kuhio Highway in Anahola. Photographs of the land parcel identified as Tax Map Key (4) 4-7-04-2 are included in the Addenda as Exhibit I. The site is described under the following subheadings.

##### **Ingress and Egress**

Ingress and egress is assumed to be available from Kuhio Highway. Kuhio Highway is a two-way, asphalt paved thoroughfare facilitating traffic between Lihue at the south end and extending in a northerly direction to Wailua, Kapaa, Anahola, Kilauea, Princeville, Hanalei, and Wainiha. The section of Kuhio Highway fronting the site is improved with single lanes of traffic in each direction. Street front improvements include overhead conduits.

##### **Size and Shape**

As shown on the Right of Entry Map dated September 4, 2011 (Service Center, Switch Yard Site, PV Site), included in the Addenda as Exhibit II, the site is somewhat quadrangular in shape and contains approximately 60 acres of land area. The 5 acre service center site is situated at the northwestern section of the site with access from Kuhio Highway by way of a driveway along the northern boundary. The 1 acre switch yard/substation site fronts Kuhio Highway near the northern end of the site. The 54 acre photovoltaic site comprises the remainder of the site. However, if KIUC leases only the 5 acre service center site, the site will be located at the Kuhio Highway frontage as depicted on the Right of Entry Map dated September 4, 2011 (Service Center), included in the Addenda as Exhibit III.

##### **Topography and Soil Condition**

The site features a generally level topography. The appraiser has not been provided with engineering studies to determine the load-bearing capacity of the land.

##### **Environmental Assessment**

The appraiser has requested information pertaining to the presence of hazardous materials. The existence of hazardous materials, which may or may not be present on or in the site, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the site. The appraiser, however, is not qualified to detect such substances. The presence of hazardous materials may affect the value of the property. The analyses presented herein is predicated on the assumption that there is no such material on or in the site that would cause a loss in value. No responsibility is assumed for any such conditions or for any engineering knowledge required to discover them.

##### **Flood Status**

Flood Hazard Districts are delineated on Flood Boundary and Floodway Maps and the Federal Insurance Rate Maps prepared by the Federal Insurance Administration and Federal Emergency Management Agency. The site is located on the Flood Insurance Rate Map primarily in an area designated Zone X, areas outside the 1 percent annual chance floodplain, areas of 1% annual chance sheet flow flooding where average depths are less than 1 foot, areas of 1% annual chance stream flooding where contributing drainage area is less than 1 square mile, or areas protected from the 1% annual chance flood by levees. The two reservoirs located at the western section of the site are designated Zone A, areas with a 1% chance of flooding and a 26% chance of flooding over the life of a 30-year mortgage.

### **Special Management Area**

A review of the Special Management Area maps discloses that the site is not located within this district and is, therefore, not subject to the constraints contained therein.

### **Utilities**

Electricity and telephone transmission lines are located overhead along Kuhio Highway. There is no current connection and service to the site. County water service is not available. Water service in Anaholoa is managed and operated by Aqua Engineers. The water main along Kuhio Highway terminates at the intersection at Kalalea Road which is located to the north in the Hawaiian Home Lands residential subdivision.

### **Easements and Restrictions**

A title report and survey were not available for review.

### **State Land Use**

Originally adopted in 1961, the State Land Use Law establishes an overall framework of land use management whereby all lands in the State of Hawaii are classified into one of four Districts: Urban, Rural, Agriculture and Conservation. The Urban District generally includes lands characterized by "city-like" concentrations of people, structures and services. This District also includes vacant areas for future development. Rural Districts are composed primarily of small farms intermixed with low-density residential lots with a minimum size of one-half acre. The Agriculture District includes lands for the cultivation of crops, aquaculture, raising livestock, wind-farming, forestry, agriculture-support activities and lands with significant potential for agriculture uses. Conservation lands are comprised primarily of lands in existing forest and water reserve zones and include areas necessary for protecting watersheds and water sources, scenic and historic areas, parks, wilderness, open space, recreational areas, habitats of endemic plants, fish and wildlife, and all submerged lands seaward of the shoreline. The Conservation District also includes lands subject to flooding and soil erosion.

The site is classified within the State Land Use (SLU) Agriculture District.

### **County Zoning**

Zoning regulations for the County of Kauai are contained in the Comprehensive Zoning Ordinance (CZO), Chapter 8, Kauai County Code 1987 (as amended). The purpose of this Chapter is to provide regulations and standards for land development and the construction of buildings and other structures in the County of Kauai. By utilizing the findings and analysis of the County General Plan, this Chapter establishes several land districts and delineates the respective types of permitted uses and development that can take place in those districts. The regulations and standards prescribed by this Chapter are intended to promote development that is compatible with the Island's scenic beauty and environment and to preclude inadequate, harmful or disruptive conditions that may prove detrimental to the social and economic well-being of the residents of Kauai.

To carry out the purposes and provisions of the CZO, six major Use Districts in conjunction with two Special Districts within the territory of the County of Kauai have been established. The Use Districts include: residential; commercial; industrial; resort; agriculture; and open. The Special Districts include: constraint; and special treatment.

According to the County of Kauai Planning Department, the site is zoned agriculture district. Pursuant to client instructions, the valuation of the 5 acre service center site is based on a hypothetical CG general commercial district zoning, and the valuation of the 1 acre switch yard/substation and 54 acre photovoltaic site is based on the current county agriculture zoning.

A copy of Article 5. Commercial Districts (C) and a copy of Article 7. Agriculture Districts (A), are included in the Addenda as Exhibits IV and V, respectively.

## V. HIGHEST AND BEST USE

Highest and best use analyses applies to both the site as though vacant and the property as currently improved. In highest and best use analyses, the four criteria that the property must satisfy are:

1. Physically possible uses;
2. Legally permissible uses;
3. Financially feasible uses; and
4. Maximally productive use.

These criteria should be considered sequentially through an examination of the physical and economic data.

Since the site is vacant, only an analysis of the highest and best use of the site as though vacant is warranted.

### Analysis of Site as Though Vacant

An analysis of the highest and best use of the site as though vacant assumes that the land parcel is vacant or that it can be made vacant through demolition of the improvements. This analysis focuses on the type of building that should be constructed or the type of improvement that should be made to the land, if any.

#### Physically Possible Uses

The physical characteristics of the site represent the first of the four criteria which must be met in determining the highest and best use. The site is somewhat quadrangular in shape and contains approximately 60 acres of land area. The 5 acre service center site is situated at the northwestern section of the site with access from Kuhio Highway by way of a driveway along the northern boundary. The 1 acre switch yard/substation site fronts Kuhio Highway near the northern end of the site. The 54 acre photovoltaic site comprises the remainder of the site. However, if KIUC leases only the 5 acre service center site, the site will be located at the Kuhio Highway frontage. The site features a generally level topography.

Based on an assessment of the physically possible uses, it is opined that the physical characteristics of the site can support both residential and non-residential uses.

#### Legally Permissible Uses

The site is classified within the State Land Use (SLU) Agriculture District and is county zoned agriculture district. The 5 acre service center site is accorded a hypothetical CG general commercial district zoning.

Generally permitted uses and structures in the agriculture districts include: accessory structures and uses; aquaculture; diversified agriculture; forestry; grazing; historic sites; intensive agriculture; livestock, poultry, and piggeries, except as provided in Sec. 8-7.3; minor food processing related to agricultural products; orchards and nurseries; outdoor recreation; pet keeping and raising, except as provided in Sec. 8-7.3; public parks and monuments; resource management; single family detached dwellings; specialized agriculture; undeveloped campgrounds; warehousing, storage and packing of plant products; and wildlife management.

Uses and structures requiring a use permit include: animal hospitals; cemeteries; churches, temples and monasteries; commercial recreation; construction and worker temporary housing; development campgrounds; golf courses; mineral extraction and



quarries; pet keeping and raising proposed within five hundred (500) feet of any Residential District; poultry and piggeries when to be located within three thousand (3000) feet of any Use District; private and public utility facilities; schools and day care centers; transportation terminals; and any other use or structure which the Planning Director finds to be similar in nature to those listed in this section and appropriate to the District.

Generally permitted uses and structures in the general commercial districts include: accessory uses and structures; automobile sales, repair and storage; automobile services; churches, temples and monasteries; clubs, lodges and community centers; commercial indoor amusement and parks; department stores; hotels and motels; household services; light manufacturing, such as handicrafts and garment fabrication; minor food processing, such as cracked seeds, jellies, candies and ice cream; museums, libraries and public services; offices and professional buildings; parking garages; personal services; public offices and buildings; public parks and monuments; research and development; restaurants and food services; retail sales; supermarkets and shopping centers; transportation terminals and docks; warehouses; and wholesale outlets.

Uses and structures requiring a use permit include: animal hospitals; bars; botanic and zoologic gardens; commercial outdoor amusement; communications facilities; construction materials storage; diversified agriculture; food processing and packaging; nightclubs and cabarets; private and public utilities and facilities; project development in accordance with Article 18 of this Chapter; residential dwellings, detached, attached or multi-family; schools and day care centers; warehouses; and any other use or structure which the Planning Director finds to be similar in nature to those listed in this section and appropriate to the Planning Director.

Based on an assessment of the legally permissible uses, agricultural, resource management, residential, commercial, and private and public utilities and facilities uses are emphasized.

#### Financially Feasible Uses

The test of financial feasibility involves an analysis of the likelihood of the use producing an income, or return, greater than the combined income needed to satisfy operating expenses, financial expenses, and capital amortization. All uses that are expected to produce a positive net income or rate of return are considered to be financially feasible.

The site is located along the western side of Kuhio Highway in Anahola. Land uses in the immediate neighborhood are predominantly agriculture oriented. A Hawaiian Home Lands residential subdivision is located to the north.

KIUC's plans for the site include development of a service center on 5 acres, a switch yard/substation on 1 acre, and a photovoltaic site on the remaining 54 acres.

Based on an analysis of the physically possible and legally permissible uses, the proposed development is considered to be a financially feasible use.

#### Maximally Productive Use

The maximally productive use of the site is that use among all of the financially feasible uses that provides the highest rate of return or value. Based upon an analysis of current economic conditions and prevailing real estate market trends, it is opined that KIUC's proposed development would maximize the return on the land.

### Conclusion

In identifying the highest and best use of the site as though vacant, we have considered the physically possible, legally permissible, financially feasible, and maximally productive uses. Based upon the conclusions drawn, it is opined that KIUC's proposed development represents the highest and best use of the land.

## **VI. THE APPRAISAL PROCESS**

### **Methodology**

The purpose of this appraisal assignment is to estimate the fair market rent, on a dollar per square foot per year basis, of the 60 acre site for the initial twenty-five (25) year period with predetermined step-up rent increases at the commencement of the 11th, 16th, and 21st years.

The methodology generally utilized in establishing land rent include: (i) the product of the market value of the land, exclusive of improvements thereon, and the applicable land rate of return; and (ii) a comparative analysis of comparable rental data (i.e. direct market comparison).

Considering that the valuation is based on a hypothetical CG general commercial district zoning for the 5 acre service center site and the current county agriculture zoning for the 1 acre switch yard/substation and 54 acre photovoltaic site, the appropriate method of valuation is the product of the market value of the land, exclusive of improvements thereon, and the applicable land rate of return.

## VII. FAIR MARKET RENT

The determination of fair market rent is based on the product of the market value of the land, exclusive of improvements thereon, and the applicable land rate of return.

KIUC has not determined whether the lease will be for the entire 60 acre site or for only the 5 acre service center site. Therefore, the valuation incorporates: (i) an analysis of the entire 60 acre site based on 5 acres zoned CG general commercial district and 55 acres zoned agriculture; and (ii) an analysis of the 5 acre service center site as a stand alone site based on the CG general commercial district zoning.

### Land Valuation - 5 Acre Service Center Site

In estimating the unencumbered fee simple value of land, the sales comparison approach is generally considered to be the appropriate method of valuation. The land parcel is valued as though vacant and available for development to its highest and best use. Based on the principle of substitution, the value of land is best measured by prices generally obtainable for comparable land parcels located within the competitive market area.

The valuation of the 5 acre service center site incorporates an analysis of the site as a portion of the 60 acre site and an analysis of the site as a stand alone site. Recent transactions involving commercial and industrial land parcels over an acre in size were researched and analyzed. Three transactions have been selected for comparative analysis and are summarized in the Addenda as Exhibit VI.

An adjustment procedure is required since no two properties are ever truly identical. The adjustment procedure dictates that a standard unit of comparison be selected. Commercial and industrial land parcels are typically analyzed on a price per square foot of land area basis. In the valuation of the service center site, price per square foot of land area is considered to be the most appropriate unit of comparison. The elements of comparison considered in this analysis include conditions of sale, market conditions, location, frontage/access, zoning, utilities, physical characteristics, and size. The adjustment procedures for the service center site as a portion of the 60 acre site and as a stand alone site are summarized in Tables 1 and 2, respectively.

Each transaction is first analyzed as to financing terms to reflect the impact of non-institutional methods of financing.

Conditions of sale is considered to equate the price of an atypical transaction. Comparables that were not transacted under market conditions are adjusted to reflect market prices.

The market conditions adjustment is considered in order to compensate for changes in real property values over time, if any, in the subject market area. The commercial and industrial real estate submarket exhibited appreciation during the middle years of the past decade followed by a period of decline and stabilization. Based on an analysis of real estate market trends during the relevant time period, no adjustment for market conditions is warranted.

The adjustment for location considers the overall desirability of the site with respect to its highest and best use. The Lihue location of Transaction Numbers 1 and 3, at the center of urban development, is accorded an adjustment of -25%. The Kilauea location of Transaction Number 2 is considered to be somewhat similar to the Anahola location of the service center site precluding an adjustment for location.

Table 1

**COMMERCIAL LAND TRANSACTIONS ADJUSTMENT SCHEDULE**  
**5 Acre Site as a Portion of the 60 Acre Premises**  
**Tax Map Key (4) 4-7-04-2 (Portion)**  
**Anahola, Kauai, Hawaii**

General Description	Subject	Transaction No. 1	Transaction No. 2	Transaction No. 3
Fourth Division, Tax Map Key	4-7-04-2 (Portion)	3-3-03-46	5-2-17-28	3-3-10-48,50,51
Street Address	Kuhlo Highway	4390 Nuhou Street	5-2723 Kuhlo Highway	4291 Kalepa Street
Location	Anahola	Lihue	Kilauea	Lihue
Land Area - Acres	5.000	14.252	15.170	14.763
Land Area - Square Feet	217,800	620,817	660,805	643,070
Zoning	CG General Commercial	CG General Commercial	IL Limited Industrial O Open	CG General Commercial
Flood Zone	Firm Zone X	Firm Zone X	Firm Zone X	Firm Zone X
Special Management Area	No	No	No	No
Transaction Date		30-Apr-09	21-Sep-06	6-Feb-06
Instrument/Financing		Deed	Deed	Deed
Sales Price/Indicated Land Value		\$11,000,000	\$2,700,000	\$6,430,763
Conditions of Sale Adjustment		\$0	\$0	\$0
Conditions of Sale Adjusted Price		\$11,000,000	\$2,700,000	\$6,430,763
Indicated Price Per Sq. Ft.		\$17.72	\$4.09	\$10.00
Market Conditions Adjustment		1.00	1.00	1.00
Market Conditions Adjusted Unit Price		\$17.72	\$4.09	\$10.00
Adjustments (%)				
Location		-25	0	-25
Frontage/Access		-15	-5	-10
Zoning		0	5	0
Utilities		-10	-10	-10
Physical Characteristics		0	0	0
Net Adjustments		-50	-10	-45
Adjusted Unit Price		\$8.86	\$3.68	\$5.50
Size Adjustment		1.08	1.09	1.08
Size Adjusted Unit Price		\$9.57	\$4.01	\$5.94
Weighting Factor		0.35	0.30	0.35
Product		\$3.35	\$1.20	\$2.08
Range of Indicated Unit Values				
Low	\$4.01			
High	\$9.57			
Mean of Adjusted Unit Values	\$6.51			
Weighted Unit Value	\$6.63			
Indicated Unit Value	\$6.63			
Indicated Land Value	\$1,444,014			
	Rounded	\$1,445,000		
		=====		

Source: Sanford D. Goto, Inc., (as of September 21, 2011) September 2011.

11-132CLT1

Table 2

**COMMERCIAL LAND TRANSACTIONS ADJUSTMENT SCHEDULE**  
**Analysis of 5 Acre Site as a Stand Alone Site**  
**Tax Map Key (4) 4-7-04-2 (Portion)**  
**Anahola, Kauai, Hawaii**

General Description	Subject	Transaction No. 1	Transaction No. 2	Transaction No. 3
Fourth Division, Tax Map Key	4-7-04-2 (Portion)	3-3-03-46	5-2-17-28	3-3-10-48,50,51
Street Address	Kuhio Highway	4390 Nuhou Street	5-2723 Kuhio Highway	4291 Kalepa Street
Location	Anahola	Lihue	Kilauea	Lihue
Land Area - Acres	5.000	14.252	15.170	14.763
Land Area - Square Feet	217,800	620,817	660,805	643,070
Zoning	CG General Commercial	CG General Commercial	IL Limited Industrial	CG General Commercial
Flood Zone	Firm Zone X	Firm Zone X	O Open	Firm Zone X
Special Management Area	No	No	Firm Zone X	No
Transaction Date		30-Apr-09	21-Sep-06	6-Feb-06
Instrument/Financing		Deed	Deed	Deed
Sales Price/Indicated Land Value		\$11,000,000	\$2,700,000	\$6,430,763
Conditions of Sale Adjustment		\$0	\$0	\$0
Conditions of Sale Adjusted Price		\$11,000,000	\$2,700,000	\$6,430,763
Indicated Price Per Sq. Ft.		\$17.72	\$4.09	\$10.00
Market Conditions Adjustment		1.00	1.00	1.00
Market Conditions Adjusted Unit Price		\$17.72	\$4.09	\$10.00
Adjustments (%)				
Location		-25	0	-25
Frontage/Access		-10	0	-5
Zoning		0	5	0
Utilities		-10	-10	-10
Physical Characteristics		0	0	0
Net Adjustments		-45	-5	-40
Adjusted Unit Price		\$9.75	\$3.89	\$6.00
Size Adjustment		1.08	1.09	1.08
Size Adjusted Unit Price		\$10.53	\$4.24	\$6.48
Weighting Factor		0.35	0.30	0.35
Product		\$3.69	\$1.27	\$2.27
Range of Indicated Unit Values				
Low	\$4.24			
High	\$10.53			
Mean of Adjusted Unit Values	\$7.08			
Weighted Unit Value	\$7.23			
Indicated Unit Value	\$7.23			
Indicated Land Value	\$1,574,694			
	<b>Rounded</b>			
	<b>\$1,575,000</b>			

Source: Sanford D. Goto, Inc., (as of September 21, 2011) September 2011.

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The adjustment for frontage/access considers the qualitative and quantitative characteristics of the street frontage and access. As a portion of the 60 acre site, the service center site will be situated at the northwestern section of the site with access from Kuhio Highway by way of a driveway along the northern boundary. However, if KIUC leases only the 5 acre service center site, the site will be located at the Kuhio Highway frontage. In comparison to the service center site as a portion of the 60 acre site, Transaction Numbers 1, 2, and 3 are accorded adjustment factors of -15%, -5, and -10%, respectively, due to qualitative and quantitative aspects of their respective street frontages and access. In comparison to the service center site as a stand alone site, Transaction Numbers 1, 2, and 3 are accorded adjustment factors of -10%, 0%, and -5%, respectively.

The adjustment for zoning considers state land use designation and county zoning. Transaction Number 2 is accorded an adjustment of 5% due to the higher order of commercial uses permitted under the CG general commercial district zoning compared to the IL limited industrial district zoning.

The adjustment for utilities considers infrastructure improvements. Water is not readily available to the service center site. Transaction Numbers 1, 2, and 3 are accorded an adjustment of -10% for utilities.

The physical characteristics adjustment considers the impact of shape and topography on utility of development. No adjustment is warranted.

An adjustment for size is normally considered to compensate for the fact that larger parcels usually tend to reflect lower unit prices while smaller parcels reflect higher unit prices. A statistical test of curve sensitivity for price ratio changes in size variance is utilized to test and develop the appropriate size adjustment factor.

As presented in Table 1, the adjusted unit values range from \$4.01 to \$9.57 per square foot with an average unit value of \$6.51 per square foot. The comparables are then weighted on the basis of overall comparability. Application of weighing factors results in a weighted unit value of \$6.63 per square foot. Based on this analysis, a unit value of \$6.63 per square foot is concluded yielding a land value estimate of \$1,444,014, rounded to \$1,445,000, for the 5 acre service center site as a portion of the 60 acre site.

As presented in Table 2, the adjusted unit values range from \$4.24 to \$10.53 per square foot with an average unit value of \$7.08 per square foot. The comparables are then weighted on the basis of overall comparability. Application of weighing factors results in a weighted unit value of \$7.23 per square foot. Based on this analysis, a unit value of \$7.23 per square foot is concluded yielding a land value estimate of \$1,574,694, rounded to \$1,575,000, for the 5 acre service center site as a stand alone site.

#### **Land Valuation - 55 Acre Switch Yard/Substation and Photovoltaic Site**

The valuation of the 55 acre switch yard/substation and photovoltaic site is based on prices generally obtainable for comparable agriculture land parcels located in the competitive market area. Recent transactions involving agriculture land parcels over 10 acres in size were researched and analyzed. Three transactions have been selected for comparative analysis and are summarized in the Addenda as Exhibit VII.

An adjustment procedure is required since no two properties are ever truly identical. The adjustment procedure dictates that a standard unit of comparison be selected. Agriculture land parcels are typically analyzed on a price per acre of land area basis. In the valuation of the switch yard/substation and photovoltaic site, price per acre of

land area is considered to be the most appropriate unit of comparison. The elements of comparison considered in this analysis include conditions of sale, market conditions, location, frontage/access, zoning, utilities, physical characteristics, and size. The adjustment procedure is summarized in Table 3.

Each transaction is first analyzed as to financing terms to reflect the impact of non-institutional methods of financing.

Conditions of sale is considered to equate the price of an atypical transaction. Comparables that were not transacted under market conditions are adjusted to reflect market prices. Although Transaction Number 1 represents a court ordered partitioning sale, the Commissioner stated that a public auction was held and that at the time of the confirmation hearing, the auction was re-opened, and a higher offer was entertained and subsequently confirmed. Therefore, no adjustment for conditions of sale is warranted.

The market conditions adjustment is considered in order to compensate for changes in real property values over time, if any, in the subject market area. Demand for agriculture land on Kauai intensified during the early to middle years of the past decade. Large acreage land parcels were in high demand for development of agricultural condominium projects. The downturn in the economy and tightening of credit by the financial institutions have had an adverse effect on market demand for agriculture land. Based on an analysis of real estate market trends during the relevant time period, a -10% adjustment is accorded to Transaction Numbers 2 and 3, which occurred during the 2007 time period, for market conditions.

The adjustment for location considers the overall desirability of the site with respect to its highest and best use. The Lihue location of Transaction Number 2, adjacent to Lihue Airport, is considered to have a limiting effect on the potential uses and users of the land. Transaction Number 2 is accorded an adjustment of 50%. The Kapaa and Kilauea locations of Transaction Numbers 1 and 3, respectively, are considered to be somewhat similar to the Anahola location of the switch yard/substation and photovoltaic site precluding an adjustment for location.

The adjustment for frontage/access considers the qualitative and quantitative characteristics of the street frontage and access. Transaction Numbers 1, 2, and 3 are accorded an adjustment of 5% due to qualitative aspects of their respective street frontages and access.

The adjustment for zoning considers state land use designation and county zoning. Transaction Number 2 is accorded an adjustment of 50% due to the easements, restrictions, and encumbrances appurtenant to the land.

The adjustment for utilities considers infrastructure improvements. Water is not readily available to the switch yard/substation and photovoltaic site. Transaction Numbers 1, 2, and 3 are accorded an adjustment of -10% for utilities.

The physical characteristics adjustment considers the impact of shape and topography on utility of development. Transaction Numbers 1 and 3 are accorded an adjustment of 10% due to topographic considerations.

An adjustment for size is normally considered to compensate for the fact that larger parcels usually tend to reflect lower unit prices while smaller parcels reflect higher unit prices. A statistical test of curve sensitivity for price ratio changes in size variance is utilized to test and develop the appropriate size adjustment factor.



Table 3

**AGRICULTURE LAND TRANSACTIONS ADJUSTMENT SCHEDULE**  
**Analysis of 55 Acre Site as Part of the 60 Acre Premises**  
**Tax Map Key (4) 4-7-04-2 (Portion)**  
**Anahola, Kauai, Hawaii**

General Description	Subject	Transaction No. 1	Transaction No. 2	Transaction No. 3
Fourth Division, Tax Map Key	4-7-04-2 (Portion)	4-4-03-4	3-5-01-6	5-2-2-11-4
Street Address	Kuhio Highway	6130 Olohehena Road	Kapule Highway	Kuhio Highway
Location	Anahola	Kapaa	Lihue	Kilauea
Land Area - Acres	55.000	13.080	47.839	194.800
Land Area - Square Feet	2,395,800	569,765	2,083,867	8,485,488
Zoning	Agriculture	Agriculture	Agriculture	Agriculture/Open
Flood Zone	Firm Zone X	Firm Zone X	Firm Zone X	Firm Zone X
Special Management Area	No	No	No	No
Transaction Date		18-Nov-09	19-Jul-07	28-Jun-07
Instrument/Financing		Commissioner's Deed	Deed	Deed
Sales Price/Indicated Land Value		\$451,000	\$643,300	\$6,000,000
Conditions of Sale Adjustment		\$0	\$0	\$0
Conditions of Sale Adjusted Price		\$451,000	\$643,300	\$6,000,000
Indicated Price Per Acre		\$34,480	\$13,447	\$30,801
Market Conditions Adjustment		1.00	0.90	0.90
Market Conditions Adjusted Unit Price		\$34,480	\$12,102	\$27,721
Adjustments (%)				
Location		0	50	0
Frontage/Access		5	5	5
Zoning		0	50	0
Utilities		-10	-10	-10
Physical Characteristics		10	0	10
Net Adjustments		5	95	5
Adjusted Unit Price		\$36,204	\$23,600	\$29,107
Size Adjustment		0.90	0.99	1.10
Size Adjusted Unit Price		\$32,584	\$23,364	\$32,017
Weighting Factor		0.40	0.20	0.40
Product		\$13,033	\$4,673	\$12,807
Range of Indicated Unit Values				
Low	\$23,364			
High	\$32,584			
Mean of Adjusted Unit Values	\$29,322			
Weighted Unit Value	\$30,513			
Indicated Unit Value	\$30,513			
Indicated Land Value	\$1,678,228			
	Rounded	\$1,680,000		
	=====			

Source: Sanford D. Goto, Inc., (as of September 21, 2011) September 2011.

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As presented in Table 3, the adjusted unit values range from \$23,364 to \$32,584 per acre with an average unit value of \$29,322 per acre. The comparables are then weighted on the basis of overall comparability. Application of weighing factors results in a weighted unit value of \$30,513 per acre. Based on this analysis, a unit value of \$30,513 per acre is concluded yielding a land value estimate of \$1,678,228, rounded to \$1,680,000, for the 55 acre switch yard/substation and photovoltaic site.

#### **Rate of Return**

The prevailing rate of return is determined based on an analysis of recent ground leases, ground lease rent renegotiations between lessors and lessees, and ground lease rent renegotiations submitted to arbitration. A summary of rates of return established in recent leases, lease rent renegotiations, and lease rent arbitrations involving residential, resort, industrial, commercial, and agriculture land parcels located in Kauai is presented in Table 4.

The rates of return indicated by the transactions range from 6.0% to 8.0%. The rates of return exhibited by the commercial zoned land parcels range from 6.0% to 7.0%. The rate of return indicated by the agriculture zoned land parcels is 6.0%. The rate of return indicated by the transactions involving easements appurtenant to electric substation and transmission line improvements is 6.0%.

Based on the foregoing, a six percent (6%) rate of return is opined to be the applicable rate of return.

#### **Annual Rent**

Application of the 6.0% rate of return against the \$1,445,000 land value concluded for the 5 acre service center site as a portion of the 60 acre site results in an annual rent of \$86,700.00, and application of the 6.0% rate of return against the \$1,680,000 land value concluded for the 55 acre switch yard/substation and photovoltaic site results in an annual rent of \$100,800.00. Based on the foregoing, an annual rent of \$187,500.00, which equates to \$0.0717 per square foot per year, is indicated for the 60 acre site.

Similarly, application of the 6.0% rate of return against the \$1,575,000 land value concluded for the 5 acre service center site as a stand alone site results in an annual rent of \$94,500.00, which equates to \$0.4339 per square foot per year.

#### **Step-Up Rents**

In projecting the step-up rent increases as of the commencement of the 11th, 16th, and 21st years, real estate market trends and economic conditions are analyzed. Two recent leases involving electricity transmission line easements provides support for the determination of the appropriate rate of increase. Analysis of the two five-year step-up rents appurtenant to the lease involving a portion of the servient property identified as Tax Map Key (4) 5-6-02-2 indicates annual compound rates of increases of 2.0% for the first five-year step-up period and 2.5% for the second five-year step-up period. Analysis of the two five-year step-up rents appurtenant to the lease involving a portion of the servient property identified as Tax Map Key (4) 5-5-06-9 indicates an annual compound rate of increase of 2.5% for both the first five-year step-up period and second five-year step up period.

Based on the foregoing analysis, an annual compound rate of increase of 2.5% is considered to be reasonable and appropriate. Application of the 2.5% annual compound rate of increase to the annual rent of \$0.0717 per square foot per year for the 60 acre site yields annual step-up rents of \$0.0918, \$0.1039, and \$0.1176 per

Table 4

**SCHEDULE OF RATES OF RETURN**  
**Tax Map Key (4) 4-7-04-2 (Portion)**  
**Anahola, Kauai, Hawaii**

Transaction Number	Address	Location	Fourth Division Tax Map Key	Land Area (Sq. Ft.)	County Zoning	Transaction	Effective Date	Fee Simple Land Value	Rate of Return (Percent)
1	3-3400 Kuhio Highway	Lihue	3-7-01-17	323,476	R-20 Residential	Arbitration	16-Jun-11	\$2,600,000	8.0%
2	3811 Edward Road	Princeville	5-4-05-39	921,817	R-10 Residential	Rent Renegotiation	1-Jul-10	\$18,870,000	8.0%
3	04-1250 Kuhio Highway	Kapaa	4-5-07-2	523,853	RR-20 Resort	Rent Renegotiation	1-Jan-10	\$11,738,071	8.0%
4	4780 Kahau Road	Kapaa	4-5-15-40	88,645	IL Limited Industrial	Arbitration	1-Aug-08	\$150,000	6.0%
5	01-3529 Kaunualii Highway	Hanapepe	1-8-08-64	42,522	CG General Commercial	Rent Renegotiation	30-Nov-07	\$761,538	6.5%
6	3630 Hanapepe Road	Hanapepe	1-9-10-37	16,855	CG General Commercial	Rent Renegotiation	18-Jan-07	\$150,000	6.0%
7	3285 Waapa Road	Lihue	3-2-04-11	26,925	IG General Industrial	Rent Renegotiation	17-Nov-06	\$490,035	7.5%
8	3746 Hana Road	Hanapepe	1-9-05-7	6,873	CG General Commercial	Rent Renegotiation	26-May-06	\$162,429	7.0%
9	5300 Ka Haku Road	Princeville	5-4-12-5,8,9	435,600	R-10 Residential	Rent Renegotiation	18-Sep-05	\$11,385,000	8.0%
10	1-3461 Kaunualii Highway	Hanapepe	1-8-08-40	54,711	CG General Commercial	Rent Renegotiation	27-Jan-05	\$370,000	6.0%
11	5611 Leho Drive	Wailua	3-9-06-26 (por.)	6,897	(1) Agriculture	Rent Renegotiation	15-Mar-01	\$43,831	6.0%
12	Waipouli Road, et al.	Wailua □ Waipouli	3-9-01-2 (por.) 4-2-01-1,2,5 (por.) 4-4-01-1 (por.) 4-4-04-5,44 (por.)	1,150,855	(2) Conservation Agriculture Open	Rent Renegotiation	14-Apr-00	\$20,850	6.0%
	Low High								6.0% 8.0%

(1) Easement to construct, use, maintain and repair electric substation and related improvements.

(2) Easement for electricity transmission line.

Source: Sanford D. Goto, Inc., (as of September 21, 2011) September 2011.

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square foot per year as of the commencement of the 11th, 16th, and 21st years, respectively.

Similarly, application of the 2.5% annual compound rate of increase to the annual rent of \$0.4339 per square foot per year for the 5 acre service center site as a stand alone site yields annual step-up rents of \$0.5554, \$0.6284, and \$0.7110 per square foot per year as of the commencement of the 11th, 16th, and 21st years, respectively.

## VIII. RECONCILIATION AND CONCLUSION

### Reconciliation

The fair market rent is based on the product of the market value of the land, exclusive of improvements thereon, and the applicable land rate of return.

Based on a comparative analysis, a land value of \$1,445,000 is concluded for the 5 acre service center site as portion of the 60 acre site, and a land value of \$1,575,000 is concluded for the 5 acre service center site as a stand alone site, both under the hypothetical condition that the 5 acre site is zoned CG general commercial district. Also based on a comparative analysis, a land value of \$1,680,000 is concluded for the 55 acre switch yard/substation and photovoltaic site under the agriculture district zoning.

The prevailing rate of return is determined based on an analysis of recent ground leases, ground lease rent renegotiations between lessors and lessees, and ground lease rent renegotiations submitted to arbitration. Based on the foregoing, a six percent (6%) rate of return is opined to be the applicable rate of return.

Application of the 6.0% rate of return against the land value conclusions results in an annual rent of \$187,500.00, which equates to \$0.0717 per square foot per year, for the 60 acre site, and an annual rent of \$94,500.00, which equates to \$0.4339 per square foot per year, for the 5 acre service center site as a stand alone site.

In projecting the step-up rent increases as of the commencement of the 11th, 16th, and 21st years, real estate market trends and economic conditions are analyzed. Based on the foregoing analysis, an annual compound rate of increase of 2.5% is considered to be reasonable and appropriate. Application of the 2.5% annual compound rate of increase to the concluded annual rents results in annual step-up rents of \$0.0918, \$0.1039, and \$0.1176 per square foot per year as of the commencement of the 11th, 16th, and 21st years, respectively, for the 60 acre site, and annual step-up rents of \$0.5554, \$0.6284, and \$0.7110 per square foot per year as of the commencement of the 11th, 16th, and 21st years, respectively, for the 5 acre service center site as a stand alone site.

### Conclusion

Based on the foregoing analyses and conclusions, it is our opinion, subject to the limiting conditions and assumptions contained within this report, that the fair market rent of the 60 acre site to be demised by the Lease for the first ten (10) years of the initial twenty-five (25) year period of the term, as of September 21, 2011, is \$0.0717 per square foot per year, and the step-up rent increases at the commencement of the 11th, 16th, and 21st years are \$0.0918, \$0.1039, and \$0.1176 per square foot per year, respectively.

It is also our opinion, subject to the limiting conditions and assumptions contained within this report, that the fair market rent of the 5 acre service center site as a stand alone site for the first ten (10) years of the initial twenty-five (25) year period of the term, as of September 21, 2011, is \$0.4339 per square foot per year, and the step-up rent increases at the commencement of the 11th, 16th, and 21st years are \$0.5554, \$0.6284, and \$0.7110 per square foot per year, respectively.

**IX. CERTIFICATION**

I certify that, to the best of my knowledge and belief:

The statements of fact contained in this report are true and correct.

The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.

I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.

I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.

My engagement in this assignment was not contingent upon developing or reporting predetermined results.

My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.

I have made a personal inspection of the property that is the subject of this report.

No one provided significant real property appraisal assistance to the person signing this certification.

The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which include the Uniform Standards of Professional Appraisal Practice.

The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

As of the date of this report, I have completed the continuing education program of the Appraisal Institute.



Sanford D. Goto, MAI  
State Certified General Appraiser CGA-48  
Certificate Expires: December 31, 2011

## ADDENDA

## EXHIBIT I

## SUBJECT PROPERTY PHOTOGRAPHS



## **SUBJECT PROPERTY PHOTOGRAPHS**



**ABOVE: Northwesterly view taken from Kuhio Highway.**

**BELOW: Southwesterly view taken from Kuhio Highway.**

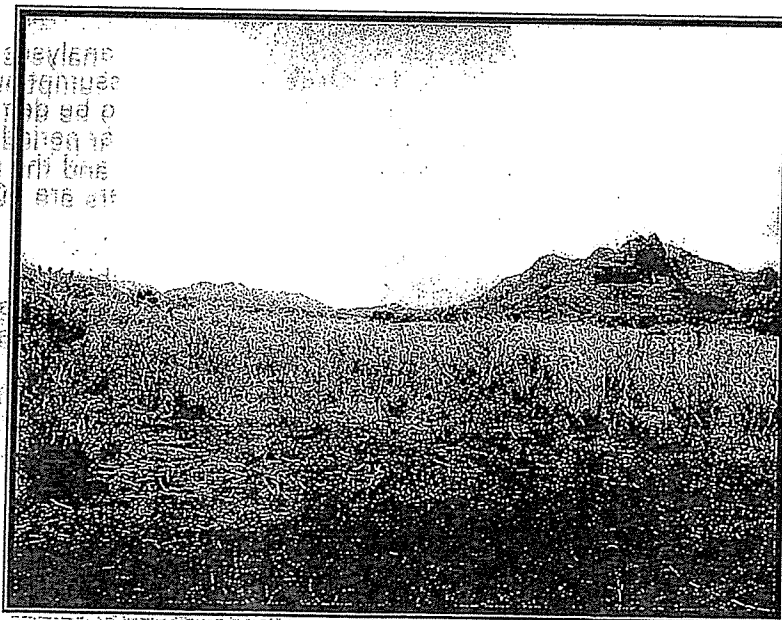


## SUBJECT PROPERTY PHOTOGRAPHS



**ABOVE:** Westerly view depicting the northern section of the site.

**BELOW:** Westerly view depicting the southern section of the site.



## SUBJECT PROPERTY PHOTOGRAPHS



**ABOVE:** Northwesterly view along Kuhio Highway. Note subject property at left.

**BELOW:** Southwesterly view along Kuhio Highway. Note subject property at right.



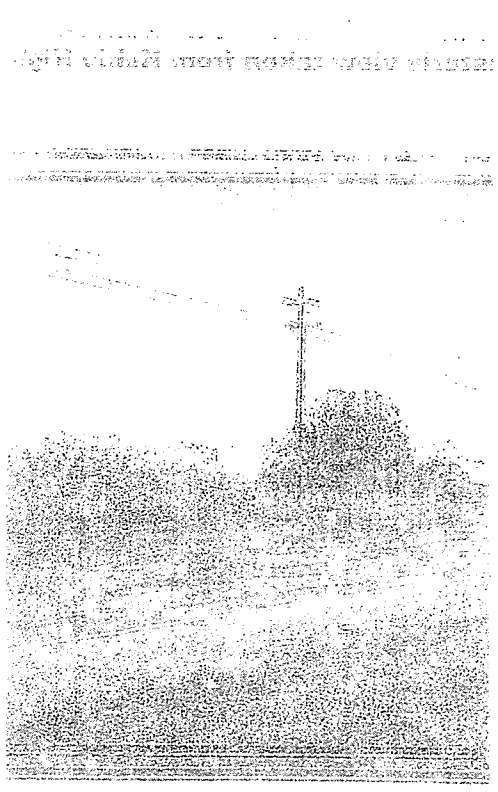
EXHIBIT II

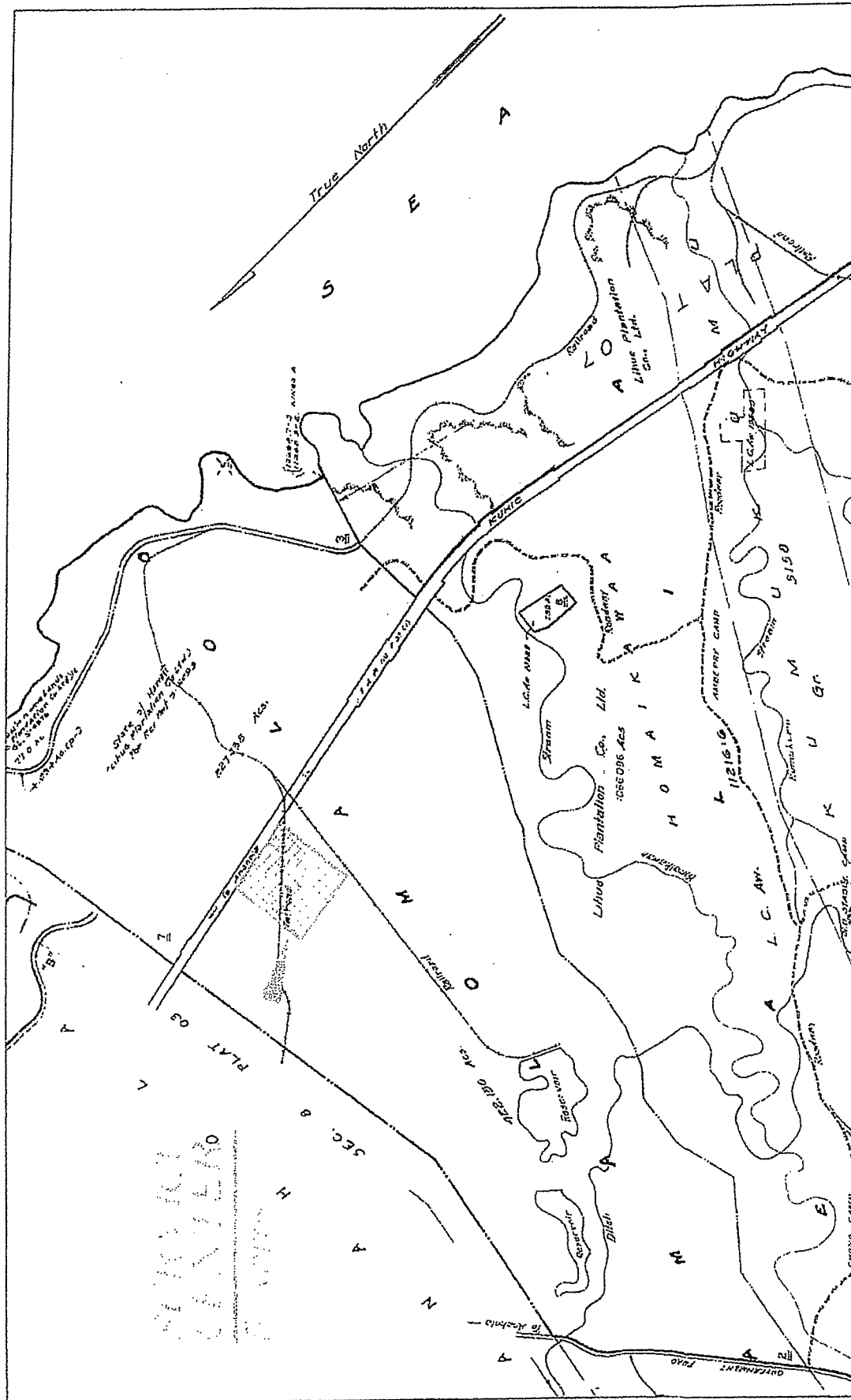
RIGHT OF ENTRY MAP  
SERVICE CENTER, SWITCH YARD SITE  
PV SITE



EXHIBIT III

RIGHT OF ENTRY MAP  
SERVICE CENTER





## KAUAI ISLAND UTILITY COOPERATIVE

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**பெயர்**

Date Sept 4, 2011

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## Department of Hawaiian Home Lands

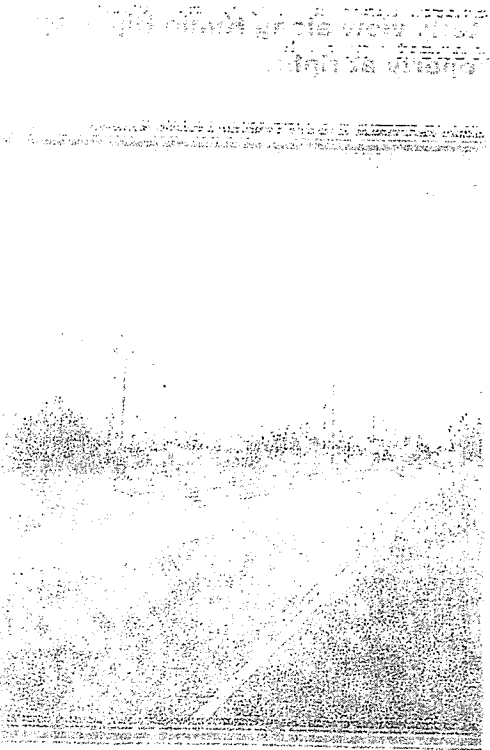
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## EXHIBIT IV

### COMMERCIAL DISTRICTS





## ARTICLE 5. COMMERCIAL DISTRICTS (C)

### Sec. 8-5.1 Purpose.

(a) To designate areas suitable for commercial and public or private business activities distributed so as to supply goods and services to the public in a convenient and efficient manner.

(b) To relate commercial and business activities to established or projected transport, utility and community patterns so that they may contribute to the general health, safety and welfare of the public.

(c) To assure that commercial and business development and uses will not detract from the environmental qualities of the surrounding areas. (Ord. No. 164, August 17, 1972; Sec. 8-5.1, R.C.O. 1976)

### Sec. 8-5.2 Types Of Commercial Districts.

(a) There are two (2) Commercial Districts:

(1) Neighborhood Commercial. The official abbreviated designation for "Neighborhood Commercial" is "CN".

(2) General Commercial. The official abbreviated designation for "General Commercial" is "CG".

(b) Neighborhood Commercial shall include uses and services which are frequently required and utilized by residents of all ages and which can be compatibly located in close proximity to residential districts.

(c) General Commercial shall include uses and services which are less frequently used and which are normally supplemented by and dependent upon the aggregate activities of a central commercial center serving several residential neighborhoods and which are less compatible with the environmental qualities of residential districts. (Ord. No. 164, August 17, 1972; Sec. 8-5.2, R.C.O. 1976)

### Sec. 8-5.3 Generally Permitted Uses And Structures.

(a) Neighborhood Commercial. The following uses and structures are permitted in neighborhood commercial districts:

- (1) Accessory uses and structures
- (2) Automobile services
- (3) Churches, temples and monasteries
- (4) Clubs, lodges and community centers
- (5) Household services
- (6) Museums, libraries and public services
- (7) Personal services, such as barber shops, laundromats, and shoe repair shops
- (8) Professional offices
- (9) Public parks and monuments
- (10) Retail shops and stores
- (11) Restaurants and food services

- (12) Single family detached dwellings on lots or parcels of no less than six thousand (6,000) square feet, and to a density not to exceed six (6) units per acre.

(b) General Commercial. The following types of uses and structures are permitted in general commercial districts:

- (1) Accessory uses and structures
- (2) Automobile sales, repair and storage
- (3) Automobile services
- (4) Churches, temples and monasteries
- (5) Clubs, lodges and community centers
- (6) Commercial indoor amusement and parks
- (7) Department stores
- (8) Hotels and motels
- (9) Household services
- (10) Light manufacturing, such as handicrafts and garment fabrication
- (11) Minor food processing, such as cracked seeds, jellies, candies and ice cream
- (12) Museums, libraries and public services
- (13) Offices and professional buildings
- (14) Parking garages
- (15) Personal services
- (16) Public offices and buildings
- (17) Public parks and monuments
- (18) Research and development
- (19) Restaurants and food services
- (20) Retail sales
- (21) Supermarkets and shopping centers
- (22) Transportation terminals and docks
- (23) Warehouses
- (24) Wholesale outlets

(Ord. No. 164, August 17, 1972; Sec. 8-5.3, R.C.O. 1976)

#### **Sec. 8-5.4 Uses And Structures In Commercial Districts That Require A Use Permit.**

(a) Neighborhood Commercial. The following uses and structures in neighborhood commercial districts require a use permit:

- (1) Animal hospitals
- (2) Automobile sales, repair and storage
- (3) Botanic and zoologic gardens
- (4) Communications facilities
- (5) Construction materials storage
- (6) Diversified agriculture
- (7) Food processing and packaging
- (8) Light manufacturing
- (9) Multiple family dwellings and single family attached dwellings
- (10) Private and public utilities and facilities
- (11) Project development in accordance with

- Article 18 of this Chapter
- (12) Research and development
  - (13) Schools and day care centers
  - (14) Warehouses
  - (15) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this section and appropriate to the District.

(b) General Commercial. The following uses and structures in general commercial districts require a use permit:

- (1) Animal hospitals
- (2) Bars
- (3) Botanic and zoologic gardens
- (4) Commercial outdoor amusement
- (5) Communications facilities
- (6) Construction materials storage
- (7) Diversified agriculture
- (8) Food processing and packaging
- (9) Nightclubs and cabarets
- (10) Private and public utilities and facilities
- (11) Project development in accordance with Article 18 of this Chapter.
- (12) Residential dwellings, detached, attached or multi-family
- (13) Schools and day care centers
- (14) Warehouses
- (15) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this section and appropriate to the Planning Director. (Ord. No. 164, August 17, 1972; Sec. 8-5.4, R.C.O. 1976)

#### Sec. 8-5.5 Development Standards For Commercial Development.

(a) Lot Size. Lot size shall be as follows:

- (1) The minimum lot or parcel area which may be created in a Neighborhood Commercial District shall be six thousand (6,000) square feet.
- (2) The minimum lot or parcel area which may be created in a General Commercial District shall be eight thousand five hundred (8,500) square feet.
- (3) Any existing legal lot or parcel of record as of the effective date of this Ordinance that is smaller than the required size may be developed for commercial use.

(4) Lot or parcel area shall be calculated in accordance with Sec. 8-3.8(b).

(b) Setback Requirements. Setback requirements shall be as follows:

- (1) Minimum distances from property lines.
  - (A) The minimum distance of any building from the right-of-way line of a public or private street or the pavement line of a driveway or parking lot

used by the public shall be five (5) feet unless the building is entered from that side by motor vehicles in which case the minimum distance shall be fifteen (15) feet.

(B) The minimum distance of any building to a side property line when the adjacent use district is commercial shall be zero. When the adjacent use district is other than commercial, the minimum distance to the property line shall be the same as that required for residential use.

(C) The minimum distance of any building to a rear property line when adjacent use district is commercial shall be zero. When the adjacent rear use district is other than commercial, the minimum distance to the rear property line shall be ten (10) feet.

(c) Minimum Distance Between Buildings. The minimum distance between detached buildings on the same parcel shall be fifteen (15) feet for each story over two (2), or onehalf (1/2) the total height of the highest building, whichever is greater.

(d) Parcel Dimension Requirements. No parcel shall be created unless:

(1) It has a minimum frontage on a public street of sixty (60) feet in a Neighborhood Commercial District and one hundred (100) feet in a General Commercial District;

(2) The average depth of the parcel is not greater than four (4) times its average width; and

(3) The minimum average width is sixty (60) feet in a Neighborhood Commercial District and one hundred (100) feet in a General Commercial District.

(e) Driveways and Parking Areas. Driveways and parking areas shall be as follows:

(1) The minimum driveway width in Commercial Districts shall be twenty (20) feet if there is two-way traffic and fourteen (14) feet if there is one-way traffic.

(2) Parking areas shall conform to standards of design and construction established by the County Engineer, provided that:

(A) No parking lot pavement edge may be located closer than five (5) feet from the right-of-way line of a public street;

(B) No part of parked vehicles shall protrude into that setback;

(C) All parking lots shall be screened from public thoroughfares by a fence, wall or plant screen not less than four (4) feet high, provided that the screening height shall be lowered to the standards as required under the County Traffic Code or to the standards of the Department of Public Works, at street corners, driveway intersections,

and other locations. The setback area between the parking area paving and the public right-of-way shall be planted and shall not be paved.

(3) Off-Street Parking. The following requirements shall apply to commercial development in the Commercial District and any other district in which such uses are permitted or allowed:

(A) General retail sales and services where sales or business transactions normally involve the presence of consumers but do not establish capacity by seating: One (1) parking space for each three hundred (300) square feet of gross floor space plus one (1) space for every three (3) employees, but not less than four (4) spaces shall be required. This category includes, but is not limited to, grocery stores, drug stores, clothing stores, gift and sundry stores, banks, personal and household services.

(B) Retail sales and services where the capacity is established by seating: One (1) parking space for each two hundred (200) square feet of gross floor space plus one (1) space for every three (3) employees, but not less than four (4) spaces shall be required. This category includes, but is not limited to, restaurants, bars, cabarets, barber and beauty shops.

(C) Offices and office buildings: One (1) parking space for every two hundred (200) square feet of net office space and waiting rooms or other spaces used by the public for the transaction of business or services, but not less than two (2) parking spaces shall be required. This category includes, but is not limited to, general business offices, medical and dental offices.

(D) Churches, sport arenas, auditoriums, theaters, assembly halls and the like: One (1) parking space for each eight (8) seats in principal assembly room.

(E) The Planning Director shall determine the distribution of requirements for any particular use or combination of uses and may increase parking requirements when particular uses or locations occur in areas where unusual traffic congestion or conditions exist or are projected.

(F) In cases where the provision of offstreet parking to meet these requirements is not feasibly consistent with the parcel size or location, the applicant may be allowed to meet these requirements at any other location within two hundred (200) feet of the parcel where the use is proposed, provided that the requisite number of parking spaces at the location are under the control of the applicant and are devoted exclusively to parking uses in connection with the

commercial development for which the application is made; and provided further, that a recorded easement or other interest is created in the land at the other location that assures permanent use of the other location for parking purposes.

(f) Height Limitations. Height limitations shall be as follows:

(1) No building within a General Commercial District shall exceed fifty (50) feet in height, measured from the ground level of the primary building entrance.

(2) No building within a Neighborhood Commercial District shall exceed thirty-five (35) feet in height measured from the ground level of the primary building entrance nor shall the building contain more than two (2) stories.

(g) Lot Coverage. Lot coverage shall be as follows:

(1) The amount of land coverage created, including buildings and pavement, shall not exceed eighty percent (80%) of the lot or parcel area within a Neighborhood Commercial District.

(2) The amount of land coverage created, including buildings and pavement, shall not exceed ninety percent (90%) of the lot or parcel area within a General Commercial District.

(3) All uncovered areas shall be landscaped with living plant material.

(h) Waste Collection Areas. Waste collection areas shall be enclosed.

(i) Sewers. All commercial development accessible to a public sewer shall provide for adequate sanitary sewer facilities in accordance with standards established by the Department of Health. In developments not accessible to public sewers, a private sewage disposal system shall be provided that meets the requirements of the Department of Public Works and the requirements of Chapter 57 of the Public Health Regulations of the State Department of Health.

(j) Public Access. The Planning Commission may require the dedication of adequate public access-ways not less than ten (10) feet in width to publicly-owned land or waters and may require the preservation of all historic and archaeological sites, known or discovered on the parcel subject to development. (Ord. No. 164, August 17, 1972; Sec. 8-5.5, R.C.O. 1976)

#### Sec. 8-5.6 Permits Required.

No construction or other development for which standards are established in this Chapter shall be undertaken within any Commercial District except in accordance with a valid zoning permit. The following zoning permits, in accordance with Article 19 shall be required for the following activities:

(1) Class I Permit. A Class I Permit must be

obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint District or a Special Treatment District and is not larger than ten thousand (10,000) square feet; and

(B) the construction or development does not require a use permit or a variance permit.

(2) Class II Permit. A Class II Permit must be obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint District or a Special Treatment District and is larger than ten thousand (10,000) square feet but smaller than twenty thousand (20,000) square feet; and

(B) the construction or development does not require a use permit or a variance permit.

(3) Class III Permit. A Class III Permit must be obtained for construction or development on a parcel where:

(A) the parcel is larger than twenty thousand (20,000) square feet but smaller than one (1) acre, whether or not the parcel is located within a Constraint District or a Special Treatment District, and the construction or development does not require a variance permit; or

(B) for construction or development on a parcel for which a Class I or Class II Permit would otherwise be obtainable except that the parcel is located in a Constraint District or a Special Treatment District.

(4) Class IV Permit. A Class IV Permit must be obtained for construction or development on a parcel that is:

(A) one (1) acre or more, whether or not the parcel is located in a Constraint District or Special Treatment District, and whether or not a use permit or variance permit is required; or

(B) for construction or development for which a Class I, II, or III Permit would otherwise be obtainable except that a variance permit is required.

(5) To obtain any permit, the applicant shall show compliance with the Standards established in this Section and shall submit, where necessary, a plot plan as required by Sec. 8-3.8(d). (Ord. No. 164, August 17, 1972; Sec. 8-5.6, R.C.O. 1976)

#### **Sec. 8-5.7 Application To Commercial Development In Other Districts.**

All commercial construction, development or use permitted by, or in accordance with, this Chapter in any other Use District shall be carried out in accordance with the Standards established in this Article, with the following

exceptions:

- (1) Building heights shall conform to the Standards of the applicable Use District.
- (2) Minimum Distances from property lines shall be the same as required of other development in the applicable Use District. (Ord. No. 164, August 17, 1972; Sec. 8-5.7, R.C.O. 1976)

**Sec. 8-5.8 Maximum Residential And Resort Densities Within Commercial Districts.**

(a) Neighborhood Commercial. The allowable maximum residential density shall be the greater of the following:

- (1) that permitted in an R-10 District;
- (2) that permitted in any Residential District that adjoins the Neighborhood Commercial District in question.

(b) General Commercial. The allowable maximum densities shall be as follows:

- (1) That permitted in an R-20 District.
  - (2) Hotels: That permitted in an RR-20 District.
  - (3) Motels: That permitted in an RR-10 District.
- (Ord. No. 164, August 17, 1972; Sec. 8-5.8, R.C.O. 1976)



## EXHIBIT V

### AGRICULTURE DISTRICTS

## ARTICLE 7. AGRICULTURE DISTRICTS (A)

### Sec. 8-7.1 Purpose.

(a) To protect the agriculture potential of lands within the County of Kauai to insure a resource base adequate to meet the needs and activities of the present and future.

(b) To assure a reasonable relationship between the availability of agriculture lands for various agriculture uses and the feasibility of those uses.

(c) To limit and control the dispersal of residential and urban use within agriculture lands. (Ord. No. 164, August 17, 1972; Sec. 8-7.1, R.C.O. 1976)

### Sec. 8-7.2 Generally Permitted Uses And Structures.

The following uses and structures are permitted in agriculture districts:

- (1) Accessory structures and uses
  - (2) Aquaculture
  - (3) Diversified agriculture
  - (4) Forestry
  - (5) Grazing
  - (6) Historic sites
  - (7) Intensive agriculture
  - (8) Livestock, poultry, and piggeries, except as provided in Sec. 8-7.3
  - (9) Minor food processing related to agricultural products
  - (10) Orchards and nurseries
  - (11) Outdoor recreation
  - (12) Pet keeping and raising, except as provided in Sec. 8-7.3
  - (13) Public parks and monuments
  - (14) Resource management
  - (15) Single family detached dwellings
  - (16) Specialized agriculture
  - (17) Undeveloped campgrounds
  - (18) Warehousing, storage and packing of plant products
  - (19) Wildlife management
- (Ord. No. 164, August 17, 1972; Sec. 8-7.2, R.C.O. 1976)

### Sec. 8-7.3 Uses And Structures That Require A Use Permit.

(a) The following uses and structures in agricultural districts shall require a use permit:

- (1) Animal hospitals
- (2) Cemeteries
- (3) Churches, temples and monasteries
- (4) Commercial recreation
- (5) Construction and worker temporary housing
- (6) Development campgrounds

- (7) Golf courses
- (8) Mineral extraction and quarries
- (9) Pet keeping and raising proposed within five hundred (500) feet of any Residential District
- (10) Poultry and piggeries when to be located within three thousand (3000) feet of any Use District
- (11) Private and public utility facilities
- (12) Schools and day care centers
- (13) Transportation terminals
- (14) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this section and appropriate to the District. (Ord. No. 164, August 17, 1972; Sec. 8-7.3, R.C.O. 1976)

**Sec. 8-7.4 Limitations On Subdivisions Of Parcels In Agriculture Districts.**

(a) Purpose:

(1) To limit, retard and control subdivision of agriculture land that will destroy agriculture stability and potential.

(2) To avoid the dissipation of agriculture lands by excessive or premature parceling for other than agriculture uses.

(3) To establish and maintain a proportionate mix of parcel sizes to accommodate optimum sizes for existing or potential agricultural uses.

(4) To establish a relationship between the size of the parcel to be subdivided and the size of the smaller parcels created by the subdivision, in order to maintain large parcels for agricultural uses and activities best carried out on large parcels and to maintain and provide smaller parcels of various sizes for agricultural uses that can be carried out most efficiently on smaller parcels.

(b) Method of Calculating Allowable Subdivision of Agriculture Lands.

(1) Contiguous lots or parcels of record in common ownership existing prior to or on September 1, 1972, no larger than three hundred (300) acres may be subdivided only in accordance with the following criteria:

(A) parcels not more than ten (10) acres may be subdivided into parcels not less than one (1) acre in size.

(B) parcels larger than ten (10) acres, but not more than twenty (20) acres, may be subdivided into parcels not less than two (2) acres in size, except that not more than four (4) lots in the parcel may be one (1) acre in size.

(C) parcels larger than twenty (20) acres, but not more than thirty (30) acres, may be

subdivided into parcels not less than three (3) acres in size, except that not more than four (4) lots in the parcel may be one (1) acre in size.

(D) parcels larger than thirty (30) acres, but not more than fifty (50) acres, may be subdivided into parcels not less than five (5) acres in size.

(E) parcels larger than fifty (50) acres, but not more than three hundred (300) acres may be subdivided into ten (10) or fewer parcels, none of which may be smaller than five (5) acres.

(2) Contiguous lots or parcels of record in common ownership existing prior to or on September 1, 1972, larger than three hundred (300) acres may be subdivided only in accordance with the following criteria:

(A) a maximum of seventy-five (75) acres may be subdivided into not more than ten (10) parcels, none of which shall be smaller than five (5) acres.

(B) an additional twenty percent (20%) of the total parcel area or three hundred (300) acres, whichever is less, may be subdivided into parcels, none of which shall be smaller than twenty-five (25) acres.

(C) the balance of the parcel area, shall not be subdivided.

(c) Limitations on Resubdivision of any Parcel in an Agriculture District Subsequent to September 1, 1972. Except as provided herein, no parcel resulting from a subdivision approved after September 1, 1972, shall be resubdivided unless the parcel is transferred to the Urban or Rural Districts under the provisions of the State Land Use Law and is transferred to a use district other than Agriculture or Open, under the provisions of this Ordinance. The restriction in this subsection shall not apply to any lot resulting from:

(1) Subdivision requested by any governmental agency;

(2) Subdivision resulting from the construction of public improvements by governmental action;

(3) Subdivision requested for public utility purposes;

(4) Consolidation and resubdivision of properties where no additional lots or parcels are created provided that the resulting properties would not permit greater density.

However, any parcel of record thirty acres or less existing prior to August of 1972 and subsequently subdivided which has not maximized density as prescribed in Subsection 8-7.4(b)(1), may be further subdivided in accordance with said subsection.

(d) Automatic Review of the Provisions of This Section. The provisions of this Article and the boundaries of the Agriculture District shall be comprehensively reviewed by the

Planning Commission in accordance with the requirements and procedures of Sec. 8-7.4(d) no later than two (2) years after the effective date of this Ordinance and every succeeding five (5) years thereafter. (Ord. No. 164, August 17, 1972; Ord. No. 186, July 17, 1973; Sec. 8-7.4, R.C.O. 1976; Ord. No. 559, November 27, 1989)

#### **Sec. 8-7.5 Permitted Residential Densities.**

Permitted residential densities shall be calculated as follows:

- (1) One (1) dwelling unit for each parcel one (1) acre or larger.
- (2) One (1) additional dwelling unit for each additional three (3) acres in the same parcel, provided that no more than five (5) dwelling units may be developed on any one (1) parcel.
- (3) A parcel or contiguous parcels in common ownership of record existing prior to or on September 1, 1972, which is smaller than one (1) acre, may develop one (1) dwelling unit. (Ord. No. 164, August 17, 1972; Sec. 8-7.5, R.C.O. 1976)

#### **Sec. 8-7.6 Development Standards For Construction And Use.**

Subject to the density, parcel and other requirements of Sec. 8-7.4 and Sec. 8-7.5, the development standards applicable in an Agriculture District shall be the same as those established in Secs. 8-3.5 and 8-3.7 of this Chapter, except that:

- (1) The minimum average lot width shall be one hundred and fifty (150) feet.
- (2) The average length of any lot shall not be greater than four (4) times its width.
- (3) The maximum height of any building, other than one intended primarily for residential use, shall be fifty (50) feet.
- (4) Public Access. The Planning Commission may require the dedication of adequate public access-ways not less than ten (10) feet in width to publicly-owned land or waters and may require the preservation of all historic and archaeologic sites, known or discovered on the parcel subject to development. (Ord. No. 164, August 17, 1972; Sec. 8-7.6, R.C.O. 1976)

#### **Sec. 8-7.7 Permits Required.**

No construction or other development for which standards are established in this Chapter shall be undertaken within any Agriculture District except in accordance with a valid zoning permit. The following zoning permits, in accordance with Article 19, shall be required for the following activities:

- (1) Class I Permit. A Class I Permit shall be obtained for construction or development on a parcel

where:

(A) the parcel is not located in a Constraint District or a Special Treatment District and is not large enough to qualify for more than one (1) dwelling unit under the density provisions of this Article; and

(B) the construction or development does not require a Use Permit or a Variance Permit.

(2) Class II Permit. A Class II Permit shall be obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint District or a Special Treatment District and is qualified for more than one (1) dwelling unit; and

(B) the construction or development does not require a Use Permit or a Variance Permit.

(3) Class III Permit. A Class III Permit shall be obtained for construction or development on a parcel where:

(A) for construction or development of a parcel for which a Class I or Class II Permit would otherwise be obtainable except that the parcel is located in a Constraint District or a Special Treatment District.

(4) Class IV Permit. A Class IV Permit shall be obtained for construction or development on a parcel where:

(A) for construction or development for which a Class I, II, or III Permit would otherwise be obtainable except that a variance or a use permit is required.

(5) To obtain any permit, the applicant shall show compliance with the Standards established in this Article and shall submit a plot plan and other information as required by Sec. 8-3.8(d). (Ord. No. 164, August 17, 1972; Sec. 8-7.7, R.C.O. 1976)

#### **Sec. 8-7.8 Application To Agricultural Development In Other Districts.**

All agricultural construction, development or use permitted by, or in accordance with, this Chapter in any other Use District shall be carried out in accordance with the Standards established in this Article. (Ord. No. 164, August 17, 1972; Sec. 8-7.8, R.C.O. 1976)

## EXHIBIT VI

### COMMERCIAL AND INDUSTRIAL LAND TRANSACTIONS SUMMARY

## Commercial and Industrial Land Transactions Summary

### Transaction Number 1

Fourth Division,  
Tax Map Key

3-3-03, Parcel 46

Address/Location

4390 Nuhou Street, Lihue, Kauai, Hawaii

Land Area

Phase 1: 14.252 acres (620,817 square feet)  
Phase 2: 8.566 acres (373,135 square feet)  
Total: 22.818 acres (993,952 square feet)

State Land Use

Urban

County Zoning

CG General Commercial District

Special Management  
Area (SMA)

No

Flood Zone

Zone X

Grantor

Grove Farm Properties, Inc., a Hawaii corporation

Grantee

Property Development Centers LLC, a Delaware limited liability company

Instrument/Date

Limited Warranty Deed with Covenants and Reservation of Rights dated April 30, 2009 and recorded on April 30, 2009 as Land Court Document No. 3853238

Contract Sales Price

\$11,000,000

Unit Land Value

\$771,821 per acre (\$17.72 per square foot)

Comments

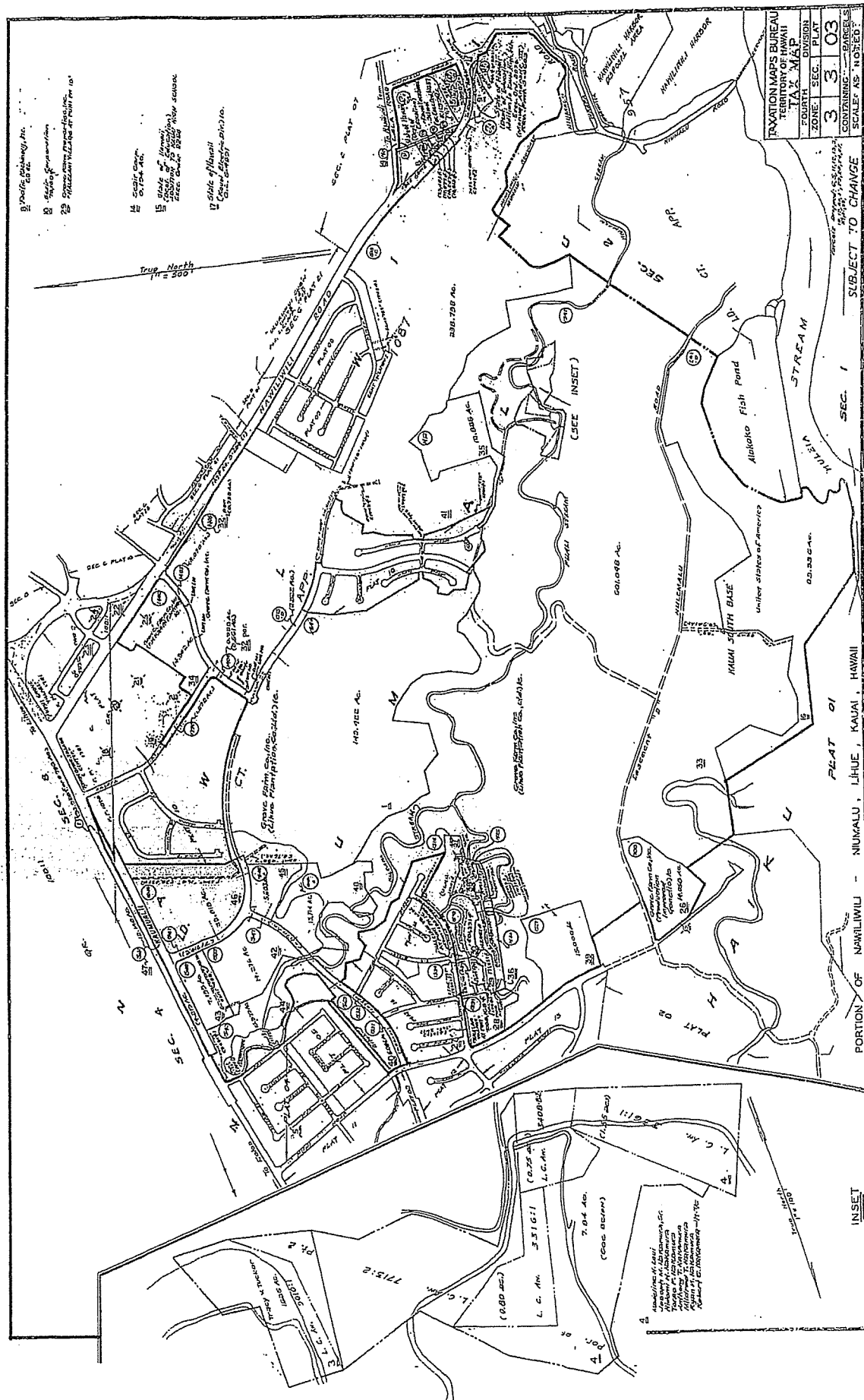
The site is irregular in shape with frontages along Nuhou Street and Kaumualii Highway. The site features a generally level topography. The site is encumbered by various easements for utilities and access purposes. Utilities available include water, sewer, electricity, and telephone.

The site is proposed for development of Hokulei Village, a 220,000 square foot retail center to be anchored by a 56,000 square foot Safeway store. The transaction represents the acquisition of the 14.252 acres Phase 1 portion of Parcel 46. In accordance with the Purchase Agreement, the Memorandum of Agreement to Reconvey Phase 2, recorded on April 30, 2009 as Land Court Document No. 3853239, provides Property Development Centers LLC a three year option to retain title to the 8.566 acres Phase 2 portion of Parcel 46 by payment to Grove Farm Development Centers LLC the Phase 2 purchase price, or alternatively transfer Phase 2 back to Grove Farm Properties LLC.

Confirmation

Grove Farm Properties, Inc.





Transaction Number 2

Fourth Division,  
Tax Map Key

5-2-17, Parcel 28

Address/Location

5-2723 Kuhio Highway, Kilauea, Kauai, Hawaii

Land Area

15.170 acres (660,805 square feet)

State Land Use

Urban

County Zoning

IL Limited Industrial District and O Open District

Special Management  
Area (SMA)

No

Flood Zone

Zone X

Grantor

Exchange Accommodators, Inc., a Hawaii corporation

Grantee

William A. Porter and M. Joan Porter, Co-Trustees of The  
Porter Revocable Trust dated August 15, 1998

Instrument/Date

Limited Warranty Deed and Assignment of Warranties  
dated September 21, 2006 and recorded on October 13,  
2006 as Document No. 2006-187316

Contract Sales Price

\$2,700,000

Unit Land Value

\$177,982.86 per acre (\$4.09 per square foot)

Comments

The site is irregular in shape with approximately 1,008.92 feet of frontage along Kuhio Highway, 655.03 feet along the western boundary, 808.94 lineal feet along the eastern boundary, and 1,263.67 lineal feet along the southern (rear) boundary. The site features a generally level topography. The site is encumbered by various easements for access purposes. Utilities available include water, electricity, and telephone.

Confirmation

William Porter



Transaction Number 3

Fourth Division, Tax Map Key	3-3-10, Parcel 48, 50, 51
Address/Location	4291 Kalepa Street, Lihue, Kauai, Hawaii
Land Area	Parcel 48: 5.039 acres (219,499 square feet) Parcel 50: 1.512 acres ( 65,855 square feet) Parcel 51: <u>8.212</u> acres (357,716 square feet) Total: 14.763 acres (643,070 square feet)
State Land Use	Urban
County Zoning	CG General Commercial District
Special Management Area (SMA)	No
Flood Zone	Zone X
Grantor	Grove Farm Land Corp., a Hawaii corporation
Grantee	Costco Wholesale Corporation, a Washington corporation
Instrument/Date	Warranty Deed dated February 6, 2006 and recorded on February 6, 2006 as Land Court Document No. 3387938
Contract Sales Price	\$6,430,763
Unit Land Value	\$435,600 per acre (\$10.00 per square foot)
Comments	<p>The site is somewhat quadrangular in shape with approximately 381.14 feet of frontage along Kalepa Street, 385.91 feet along Nuhou Street, and 414.69 feet along Pikaki Street. The site features a generally level topography. The site is encumbered by various easements for utilities, access, parking, and drainage purposes. Utilities available include water, sewer, electricity, and telephone.</p> <p>The site has been developed with a Costco store.</p>
Confirmation	Grove Farm Land Corp.

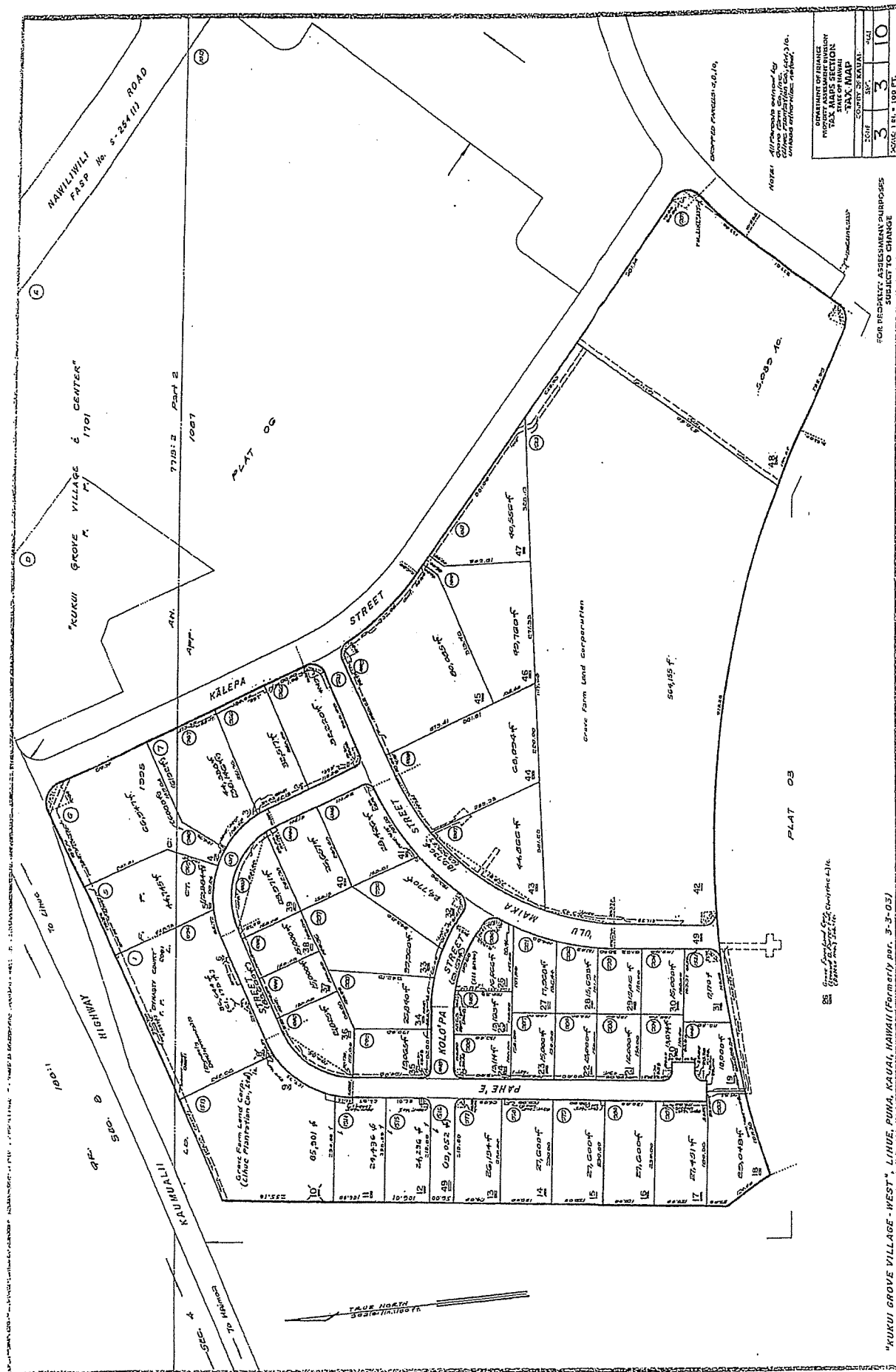
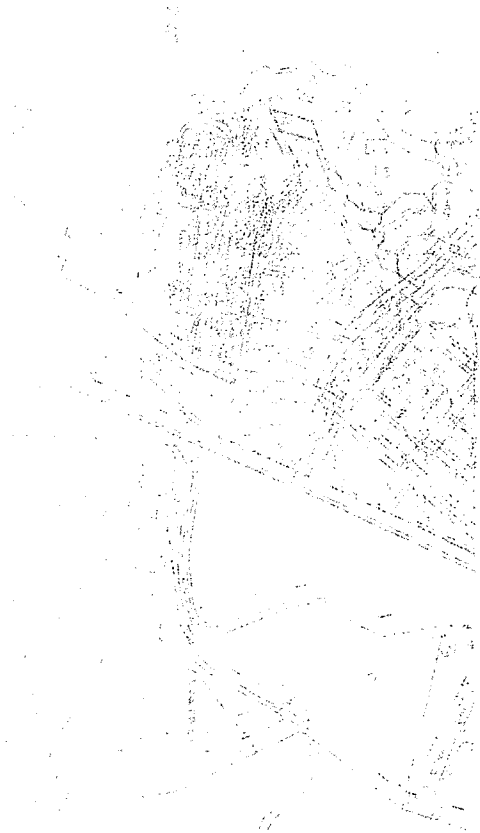


EXHIBIT VII

AGRICULTURE LAND  
TRANSACTIONS SUMMARY



## Agriculture Land Transactions Summary

### Transaction Number 1

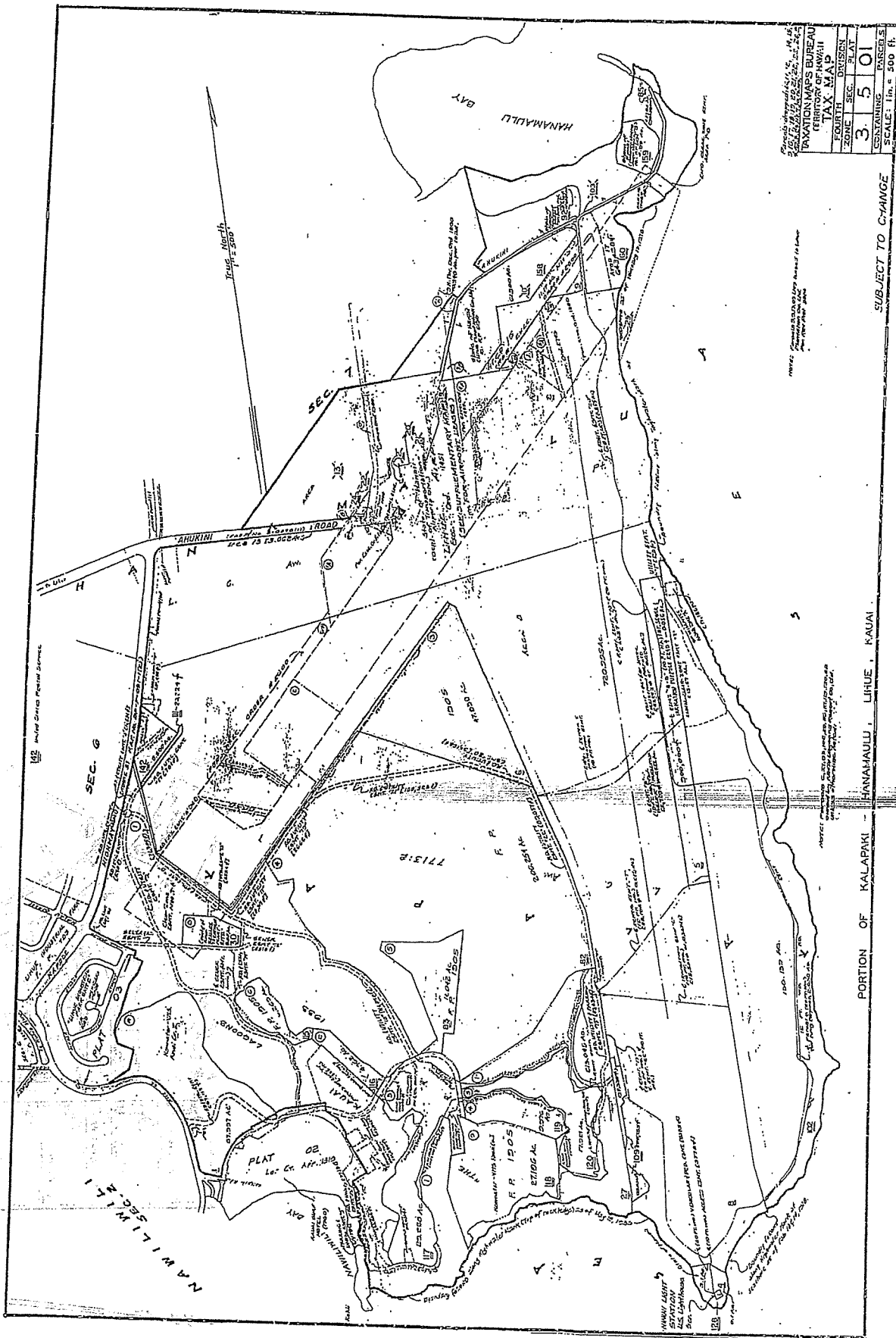
Fourth Division, Tax Map Key	4-4-03, Parcel 4
Address/Location	6130 Olohena Road, Kapaa, Kauai, Hawaii
Land Area	13.08 acres (569,765 square feet)
State Land Use	Agriculture
County Zoning	Agriculture
Special Management Area (SMA)	No
Flood Zone	Zone X
Grantor	Robert Goldberg, Commissioner
Grantee	Seina Holdings, LLC, a Hawaii limited liability company
Instrument/Date	Commissioner's Deed dated November 18, 2009 and recorded on November 24, 2009 as Document No. 2009- 179728
Contract Sales Price	\$451,000
Unit Land Value	\$34,480 per acre (\$0.7916 per square foot)
Comments	<p>The site is irregular in shape with access provided by a driveway fronting Olohena Road. The topography of the site varies featuring flat and sloping terrains and a stream. Utilities available include water and electricity.</p> <p>The transaction represents a court ordered partitioning sale. According to the Commissioner, a public auction was held, and at the time of the confirmation hearing, the auction was re-opened, and a higher offer was entertained and subsequently confirmed.</p>
Confirmation	Robert Goldberg, Commissioner





Transaction Number 2

Fourth Division, Tax Map Key	3-5-01, Parcel 6
Address/Location	3200 Kapule Highway, Lihue, Kauai, Hawaii
Land Area	47.839 acres (2,083,867 square feet)
State Land Use	Agriculture
County Zoning	Agriculture
Special Management Area (SMA)	No
Flood Zone	Zone X
Grantor	Kauai Development LLC, a Hawaii limited liability company
Grantee	Mori Golf (Kauai), LLC, a Delaware limited liability company
Instrument/Date	Limited Warranty Deed dated July 19, 2007 and recorded on August 10, 2007 as Document No. 2007-144032
Contract Sales Price	\$643,300
Unit Land Value	\$13,447 per acre (\$0.3087 per square foot)
Comments	The site is somewhat triangular in shape with access provided by right of way from Kapule Highway. The site features a generally level topography. The site is encumbered by various easements for roadway, utility, and sewer purposes. The site is also encumbered by clear zone easement area for Lihue Airport. Utilities available include water, sewer, and electricity.
Confirmation	Public records



PORTION OF KALAPAKI - HANALEI, LIHUE, KAUAI

SUBJECT TO CHANGE

TAXATION MAPS BUREAU			
TERRITORY OF HAWAII			
TAX MAP			
FOURTH	DIVISION	ZONE	SEC. 1
3	5	01	
CONTAINING PARCELS			
SCALE: 1 in. = 500 ft.			

Transaction Number 3

Fourth Division, Tax Map Key	5-2-02, Parcel 11, CPR 4
Address/Location	5-2151 Kuhio Highway, Kilauea, Kauai, Hawaii
Land Area	194.80 acres (8,485,488 square feet)
State Land Use	Agriculture
County Zoning	Agriculture/Open
Special Management Area (SMA)	No
Flood Zone	Zone X
Grantor	Jack Lee Jewell and Tatiana E. Jewell
Grantee	Kohala Investments, LLC, a Colorado limited liability company
Instrument/Date	Apartment Deed dated June 28, 2007 and recorded on July 3, 2007 as Document No. 2007-119340
Contract Sales Price	\$6,000,000
Unit Land Value	\$30,801 per acre (\$0.7071 per square foot)
Comments	The site is irregular in shape with access provided by a right of way from Kuhio Highway. The topography of the site varies featuring pastures and peninsulas and valleys with waterfalls and streams. Utilities available include water and electricity.
Confirmation	Sleeping Giant Sotheby's International Realty, Listing Broker



## PROFESSIONAL QUALIFICATIONS

## PROFESSIONAL QUALIFICATIONS OF SANFORD D. GOTO, MAI

### Business Background

President, Sanford D. Goto, Inc., a real estate appraisal and consulting corporation (1992 to current).

President and Designated Realtor, SDG, Inc., a real estate brokerage corporation (1988 to current).

Former Assistant Vice President and Staff Appraiser, Hastings, Conboy, Braig & Associates, Ltd., a real estate appraisal and counseling firm (1983 to 1992).

### Education

B.B.A. (Marketing) 1979, University of Hawaii

#### Appraisal Institute Courses:

Examination 1A-1	Real Estate Appraisal Principles
Examination 1A-2	Basic Valuation Procedures
Examination 1B-A	Capitalization Theory and Techniques, Part A
Examination 1B-B	Capitalization Theory and Techniques, Part B
Examination 2-1	Case Studies in Real Estate Valuation
Course SPP	Standards of Professional Appraisal Practice, Parts A and B
Course 2-2	Valuation Analysis and Report Writing
Examination 101	Introduction to Appraising Real Property
Examination 102	Applied Residential Property Valuation
Course 201	Principles of Income Property Appraising

#### Appraisal Institute Seminars:

- Litigation, Arbitration
- Income Analysis
- Income Valuation
- Hotel/Motel Valuation
- Valuation of Leasehold Interest
- Valuation of Leased Fee Interest
- Residential Valuation
- Environmental Risk and the Real Estate Appraiser
- Understanding Limited Appraisals - General
- Appraisal of Retail Properties
- EDI and the Appraisal Profession
- Analysis, Technology
- Detrimental Conditions in Hawaii
- Valuation of Fast Food Restaurant Facilities
- Appraisal of Self-Storage Facilities
- New Industrial Valuation
- Eminent Domain & Condemnation Appraising
- The Appraiser as an Expert Witness: Preparation and Testimony
- Standards of Professional Practice, Part C
- Federal Land Exchanges
- Appraisal of Nonconforming Uses
- Separating Real & Personal Property from Intangible Business Assets
- Appraisal Consulting - A Solutions Approach for Professionals
- Litigation Appraising: Specialized Topics and Applications
- Scope of Work
- Statistics Review with Appraisal Applications
- Market Analysis and the Site to do Business

**Appraisal Institute Seminars (continued):**

- Relocation Appraising - The Process
- Secrets of a Successful Litigation Practice
- Business Practices and Ethics
- Online Cool Tools: New Technology for Real Estate Appraisers
- Uniform Appraisal Standards for Federal Land Acquisitions
- Defensive Appraising: Dealing with Client Pressure
- Appraising for Alternate Uses: Life Beyond Lending
- Online Introduction to International Valuation Standards
- Online Apartment Appraisal, Concepts & Applications
- Appraisal Curriculum Overview (2-day General)
- Loss Prevention Program for Real Estate Appraisers

**Professional Licensing**

State of Hawaii, Certified General Appraiser, CGA-48 (Certificate expires on December 31, 2011).

State of Hawaii, Real Estate Broker, RB-14544 (License expires on December 31, 2012).

**Association Memberships**

Appraisal Institute, Member (MAI Designation), currently certified in continuing education program.

Honolulu Board of Realtors, Realtor Member.





# Comparables

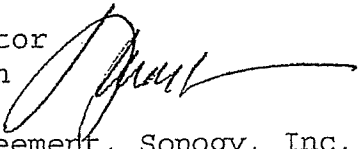
STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

→ Van Matsushige

Mau -  
Kauai -

June 23, 2009

To: Chairman and Members, Hawaiian Homes Commission

From: Linda Chinn, Administrator  
Land Management Division 

Subject: Issuance of License Agreement, Sopogy, Inc., Kalaeloa,  
Oahu

→ 12/2010 questions

RECOMMENDED MOTION/ACTION

That the Hawaiian Homes Commission (HHC) approve the issuance of an exclusive, non-benefit license agreement (License) to Sopogy, Inc. (LICENSEE) for the use of approximately 34 acres (1,481,040 square feet) of Hawaiian Home Lands in Kalaeloa, Oahu, identified as a portion of Tax Map Key No. (1)9-1-13:28, and shown as the diagonally-lined area on Exhibit "A", attached hereto, for the development, operation, management and maintenance of a solar power plant subject to the following conditions:

1. The site shall be used for constructing solar thermal panels (collectors), a thermal storage system and a "power block" that generates alternating electrical current to be fed onto the Hawaiian Electric Company grid, as well as other facilities to be used in conjunction therewith.
2. The initial term of the License shall be for twenty (20) years commencing on the date the system is placed in service. The Chairman of the HHC (Chairman) shall be authorized to extend the term of the license for good cause to be shown by LICENSEE.
3. Upon approval of the HHC, the Chairman shall be authorized to issue the License which will allow LICENSEE to conduct due diligence studies and HRS Chapter 343 compliance to be followed by site preparation and construction, provided LICENSEE pays a good faith deposit of \$25,000.00. Said deposit shall be applied to the rent once the system is placed in service, however the deposit shall be forfeited if the project is not placed in service within a reasonable time (approximately 18 months) and LICENSEE fails to provide LICENSOR with compelling reasons, beyond LICENSEE'S control, that justify a full or partial refund.

4. The rent commencement date shall be the date the system is placed in service. The annual rent for the first ten (10) years of the License shall be \$355,200.00, payable in monthly installments of \$29,600.00. Annual rent for years 11 to 15 will be \$444,000.00 (a 25% increase) and for years 16 to 20 the rent will be \$499,500.00 (a 12.5% increase). Should the LICENSEE request and be granted an extension beyond the initial 20-year term, the License, the Chairman of the HHC shall be authorized to negotiate changes to the License deemed prudent, if any.
5. LICENSEE shall pay a non-refundable processing and documentation fee totaling \$275.00.
6. The Premises shall be rented "as is" and LICENSEE understands that there are no existing utility services to the site. LICENSEE agrees to pay for all the costs of establishing and maintaining utility services to the property and pay for all consumption of utilities on the licensed premises, as may be needed by LICENSEE, including interim services that may be provided by the U. S. Navy.
7. No residential use shall be permitted on the premises, including overnight camping.
8. LICENSEE shall purchase liability insurance with a minimum coverage of \$2 million and name the Department of Hawaiian Home Lands as an additional insured.
9. LICENSEE shall pay all real property taxes assessed by the City and County of Honolulu for the licensed area.
10. LICENSEE shall be responsible for the security of the licensed premises and all of LICENSEE'S personal property thereon. LICENSEE shall be allowed to install a security system provided DHHL has reviewed and approved the type of system to be installed.
11. LICENSEE shall invest 1% of the project's net annual profit to fund a renewable energy program benefiting native Hawaiians, such as a vocational curriculum administered through the Hawaiian Language Immersion Schools or other educational facilities selected by the LICENSOR. Funds could also be used to establish a short certification course for students interested in learning about renewable energy. Additionally, as part of the educational outreach, LICENSEE is willing to make presentations in various schools selected by LICENSOR, which

will cover all forms of alternative energy as well as provide career opportunity information.

12. LICENSEE shall comply with all federal, state and county regulations or requirements regarding environmental issues and the safe handling and disposal of toxic or hazardous materials. LICENSEE shall be responsible for environmental clean up of any contamination or hazardous materials found on the site that is caused by LICENSEE'S activities on the Premises.

13. LICENSEE is aware that there may be sensitive archeological sites on the Premises and shall exercise caution when undertaking any disturbance of the existing ground surface. If a suspected archeological site is discovered, LICENSEE shall comply with all governmental requirements for properly handling such discovery.

14. Other standard terms and conditions of similar licenses issued by DHHL.

15. The License shall be subject to the review and approval of the Department of the Attorney General.

16. Other terms and conditions deemed prudent by the Chairman of the Hawaiian Homes Commission.

#### DISCUSSION

Sopogy Inc. is a Hawaii-owned corporation that built and operates a similar solar power project on the island of Hawaii (at NELHA). Recently, Sopogy was given approval to set up solar test equipment on a small portion of DHHL's parking lot in Kapolei. Sopogy's test results determined that there was good potential within the Ewa/Kapolei area for solar energy generation and has requested the use of approximately 34 acres in Kalaheo for further evaluation as a viable solar power plant. If approved, a license will be issued that will allow Sopogy to conduct such evaluation of the site.

While there are many issues still to be resolved, primarily between Sopogy and Hawaiian Electric Company, Inc. (HECO), such as inter-connection and power purchase agreements, a license shall allow Sopogy to move forward in its negotiations with HECO while conducting other site evaluation studies and an environmental assessment in compliance with Chapter 343 of the Hawaii Revised Statute.

LMD feels that the rent proposed herein, although lower than estimated fair market rent (if the property and economy could support other industrial uses at this time), is reasonable because it will be a part of DHHL'S contribution to the State of Hawaii's renewable energy initiative, is in keeping with DHHL'S *Ho'omaluo Energy Policy* recently adopted by the HHC, and will provide benefits to native Hawaiians as expressed in item #11, herein.

The authority for the Hawaiian Homes Commission to issue licenses is found in Section 207(c)(1), HHCA, 1920, as amended. The procedure to implement this or similar type licenses is found in Sections 10-4-21 and 10-4-22, DHHL Administrative Rules, 1998, as amended.

The same DHHL Rules permit DHHL, subject to the approval of the commission, to negotiate and consummate the rental rate (or license value) of a license, when prudent management does not dictate that the rental rate be established by appraisal. Further, the Governor's renewable energy initiative authorizes State Departments to enter into direct negotiations with renewable energy producers.

Chapter 343, Environmental Assessment: The proposed will be subject to Chapter 343 compliance, however, the project is not expected to cause major impacts on the environment or surrounding community and therefore a Finding of No Significant Impact (FONSI) is anticipated. Said FONSI shall be subject to the review and acceptance of the HHC.

#### RECOMMENDATION

Land Management Division recommends approval of the requested motion/action as stated.

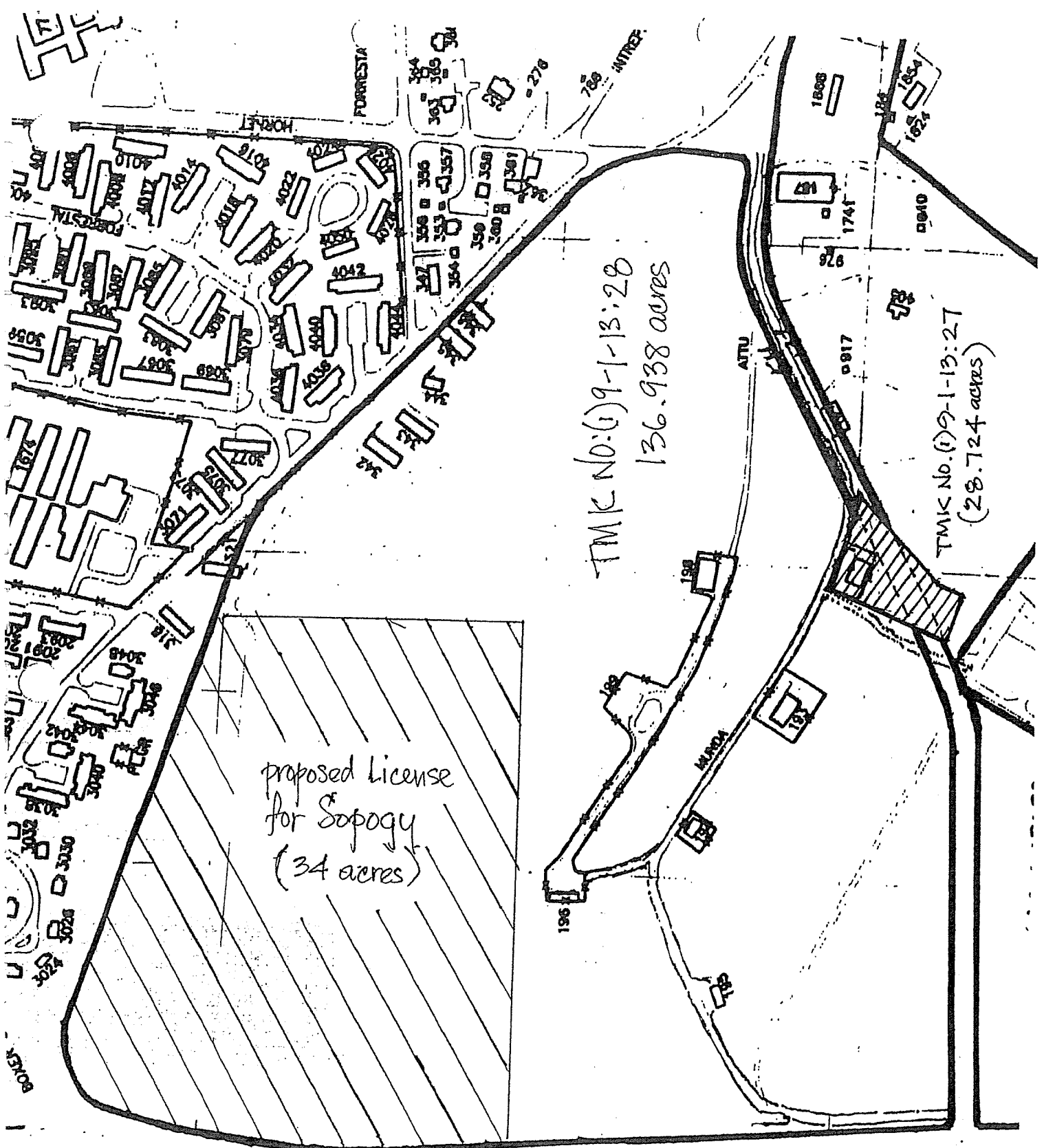


EXHIBIT "A"

Item No. D-5

**ITEM NO: D-4**

**SUBJECT: Issuance of License Easement, County of Hawai'i, Ane Keohokalole Highway, Kealahou, Hawai'i**

**CORRECTION:** The license easement should be issued to the County of Hawai'i instead of the Department of Finance. License should be issued to the Department of Public Works.

**MOTION**

Moved by Commissioner T. Morikawa, seconded by Commissioner M. Kamaka..

**DISCUSSION**

Hawai'i County representative, Gerald Takase, is hoping to break ground by the end of 2009 with a completion date scheduled for 2012. DHHL has been assisting the County in meeting its aggressive deadline.

**ACTION**

Motion carried unanimously.

**ITEM NO: D-5**

**SUBJECT: Issuance of License Agreement, Sopogy, Inc., Kalaeloa, O'ahu**

**MOTION**

Moved by Commissioner M. Kamaka, seconded by Commissioner P. Artates.

**DISCUSSION**

Van Matsushige, Project Developer for Sopogy, Inc., explained why the solar thermal storage system being built in Kalaeloa is limited to a 4 megawatt project. A 5 megawatt project would have required a bidding process with Hawaiian Electric. The time frame is to have this system operational in 2010. Sopogy's goal is to develop alternative electric projects throughout Maui, Kaua'i and the Big Island and to work in conjunction with the Hawai'i clean energy initiative. Students at Konawaena High School participated in this hands-on outreach project, learning the technological environmental benefits of solar thermal system.

**ACTION**

Motion carried unanimously.

*Diana Kimura*

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

May 18, 2010

To: Chairman and Members, Hawaiian Homes Commission

Through: Linda Chinn, Administrator  
Land Management Division

From: Todd Gray, Land Manager  
Land Management Branch

Subject: Issuance of General Lease, Kalaeloa Solar One, LLC;  
Kalaeloa, Oahu

RECOMMENDED MOTION/ACTION

That the Hawaiian Homes Commission (HHC) authorizes the issuance of a general lease (Lease) to Kalaeloa Solar One, LLC (LESSEE) for the use of approximately 34 acres out of a total of 136.94 acres of Hawaiian Home Lands in Kalaeloa, Oahu, identified as a portion of Tax Map Key No. (1)9-1-13:28, and shown as the diagonally-lined area on Exhibit "A," attached hereto, for the development, operation, management and maintenance of a solar power production facility subject to the following conditions:

1. The HHC shall rescind its June 23, 2009 approval of a License Agreement to Sopogy, Inc. (development partner of LESSEE) for the development, operation, management and maintenance of a solar power production facility;
2. The site shall be used for constructing solar thermal panels (collectors), a thermal storage system and a "power block" that generates alternating electrical current to be fed into the Hawaiian Electric Company grid, as well as other facilities to be used in conjunction therewith;
3. The initial term of the Lease shall be for twenty (20) years and shall commence on the date the system is placed in service. The Chairman of the HHC (Chairman) shall be authorized to extend the term of the Lease for good cause to be shown by LESSEE or as agreed to through negotiations with LESSEE;
4. Upon approval of the HHC, the Chairman shall be authorized to issue a temporary permit or the Lease which will allow LESSEE



to conduct due diligence studies and HRS Chapter 343 compliance to be followed by site preparation and construction, provided LESSEE pays a good faith deposit of \$25,000.00. Said deposit shall be applied to the rent once the system is placed in service, however the deposit shall be forfeited if the project is not placed in service within a reasonable time (approximately 18 months) after the date the GL is executed and LESSEE fails to provide DHHL with compelling reasons, beyond LESSEE'S control, that justify a full or partial refund;

5. The rent commencement date shall be the date the system is placed in service. The annual rent for the first ten (10) years of the Lease shall be \$355,200.00, payable in monthly installments of \$29,600.00. Annual rent for years 11 to 15 will be \$444,000.00 (a 25% increase) and for years 16 to 20 the rent shall be \$499,500.00 (a 12.5% increase). Rent provisions above and beyond the minimum stated herein, such as, but not limited to, annual rent increases and/or option fees, shall be subject to negotiations and established prior to execution of the Lease provided such negotiated rents shall not be less than those shown above nor shall rent for any subsequent year of the Lease be less than that for the year immediately preceding. Should the LESSEE request and be granted an extension beyond the initial 20-year term of the Lease, the Chairman of the HHC shall be authorized to negotiate changes to the Lease deemed prudent, if any;

6. LESSEE shall pay a non-refundable processing and documentation fee totaling \$275.00 prior to issuance of the LEASE;

7. The Premises shall be rented "as is" and LESSEE understands that there are no existing utility services to the site. LESSEE agrees to pay for all the costs of establishing and maintaining utility services to the property and pay for all consumption of utilities on the leased premises, as may be needed by LESSEE, including interim services that may be provided by the U.S. Navy;

8. No residential use shall be permitted on the premises, including overnight camping;

9. LESSEE shall purchase liability insurance with a minimum coverage of \$2 million and name the Department of Hawaiian Home Lands as an additional insured;

10. LESSEE shall pay all real property taxes assessed by the City and County of Honolulu for the leased area;

11. LESSEE shall be responsible for the security of the leased premises and all of LESSEE'S personal property thereon. LESSEE shall be allowed to install a security system provided LESSOR has reviewed and approved the type of system to be installed;
12. LESSEE shall invest 1% of the project's net annual profit to fund a renewable energy program benefiting native Hawaiians, such as a vocational curriculum administered through the Hawaiian Language Immersion Schools or other educational facilities selected by the LESSOR. Funds could also be used to establish a short certification course for students interested in learning about renewable energy. Additionally, as part of the educational outreach, LESSEE is willing to make presentations in various schools selected by LESSOR, which will cover all forms of alternative energy as well as provide career opportunity information;
13. LESSEE shall comply with all federal, state and county regulations or requirements regarding environmental issues and the safe handling and disposal of toxic or hazardous materials. LESSEE shall be responsible for environmental clean up of any contamination or hazardous materials found on the site that is caused by LESSEE'S activities on the Premises.
14. LESSEE is aware that there may be sensitive archeological sites on the Premises and shall exercise caution when undertaking any disturbance of the existing ground surface. If a suspected archeological site is discovered, LESSEE shall comply with all governmental requirements for properly handling such discovery;
15. Other standard terms and conditions of similar leases issued by DHHL;
16. The Lease shall be subject to the review and approval of the Department of the Attorney General;
17. Other terms and conditions deemed prudent by the Chairman of the Hawaiian Homes Commission.

#### DISCUSSION

At its June 23, 2009 meeting, the Hawaiian Homes Commission (HHC) approved a License Agreement for Sopogy, Inc. to develop, operate, manage and maintain a solar power plant on Hawaiian home lands in Kalaeloa. Since that time, Sopogy has begun its

due diligence including the Phase I, Environmental Site Investigation.

During the due diligence period, Sopogy requested that the Land Management Division (LMD) consider converting the License Agreement to a General Lease. However, as the parcel issued to Sopogy for implementation of their project was only a portion of a larger parcel and not legally subdivided, a Lease could not be issued. Subsequently, Sopogy requested that LMD further consider issuance of a Lease under HRS 201N which provides a subdivision exemption for the development and operation of renewable energy projects. Issuance of a Lease (as opposed to a License) for use of the parcel would allow Sopogy to diversify its funding sources.

For clarification if the project qualifies for a subdivision exemption, LMD requested an opinion from the department's Attorney General's (AG) office. According to the AG, it is their belief that Sopogy's concentrated solar project does qualify under the 201N as a renewable energy project.

Therefore, Land Management Division is requesting that the Hawaiian Homes Commission rescind the previously approved License and issue a twenty (20) year General Lease with similar terms and conditions as the license.

Kalaeloa Solar One, LLC (KSO) is Sopogy's development partner for this project. Sopogy is requesting that the Lease be issued to KSO. Although KSO will build out the project, Sopogy will equip it and its subsidiary will operate it.

Sopogy remains in close contact with the Land Management Division with regards to their plans throughout their due diligence process. If approved, Sopogy plans to break ground in the fourth quarter of 2010.

#### AUTHORITY

The authority for the Hawaiian Homes Commission to issue leases is found in Section 204(a)(2), HHCA, 1920, as amended. The procedure to implement this or similar type leases is found in Section 10-4-1, DHHL Administrative Rules, 1998, as amended.

The same DHHL Rules permit DHHL, subject to the approval of the HHC, to negotiate and consummate the rental rate of a lease, when prudent management does not dictate that the rental rate be established by appraisal. Further, the Governor's renewable energy initiative authorizes State Departments to enter into

direct negotiations with renewable energy producers pursuant to HRS Chapter 171-95.

Chapter 343, Environmental Assessment: The proposed Lease shall be subject to Chapter 343 compliance, however, the project is not expected to cause major impacts on the environment or surrounding community and therefore a Finding of No Significant Impact (FONSI) is anticipated. Said FONSI shall be subject to the review and acceptance of the HHC.

RECOMMENDATION

Land Management Division recommends approval of the requested motion/action as stated.

*Anahola suitable?*

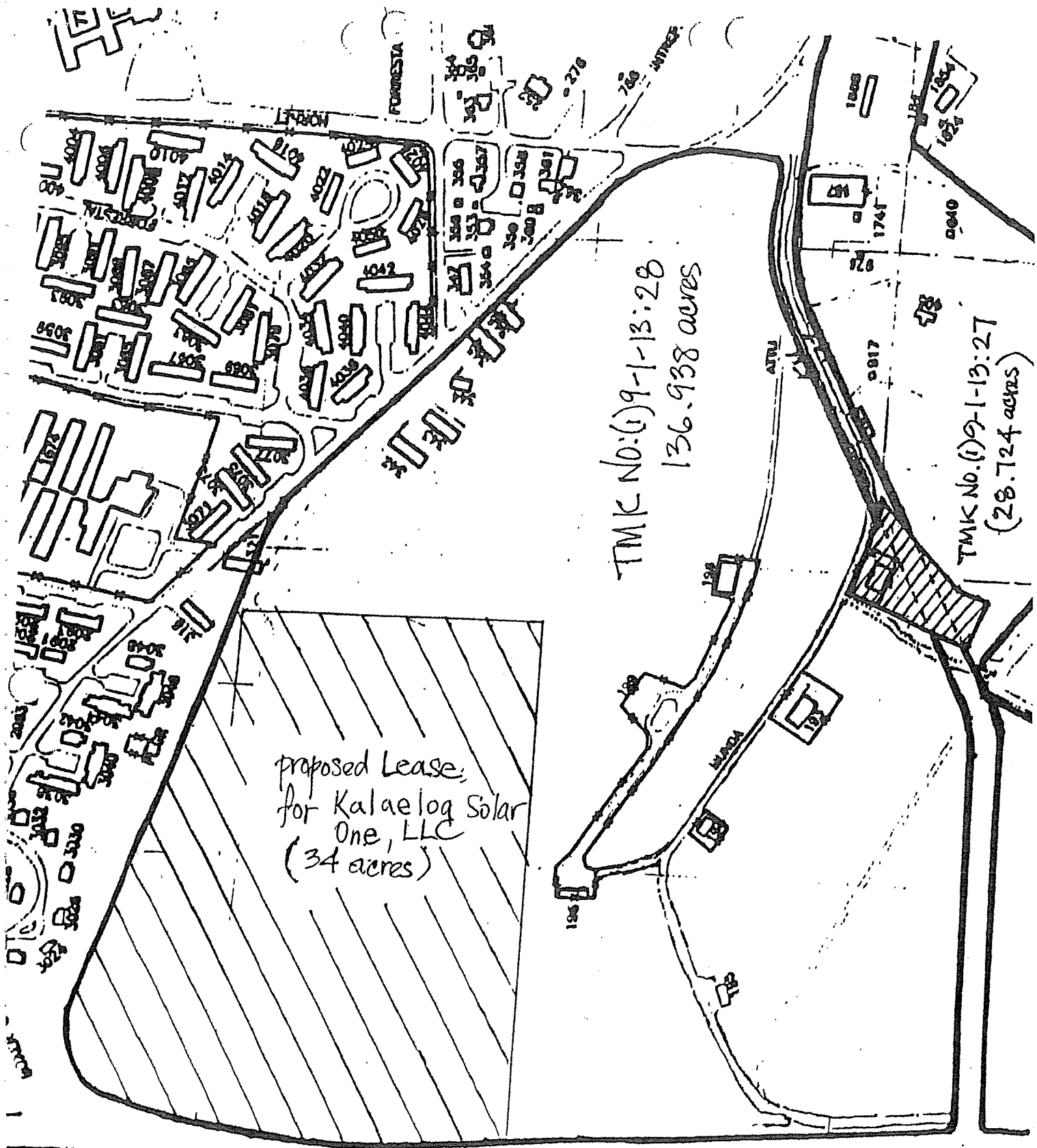


EXHIBIT "A"

Item No. D-2

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. 293

THIS INDENTURE OF LEASE (the "Lease"), is made and effective as of the 3<sup>rd</sup> day of September, 2010, (the "Effective Date"), by and between THE STATE OF HAWAII, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and whose post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called "LESSOR," and KALAELOA SOLAR ONE, LLC, a Hawaii limited liability company, whose business and mailing address is 2660 Waiwai Loop, Honolulu, Hawaii 96819, hereinafter called "LESSEE."

WITNESSETH:

WHEREAS, LESSOR, pursuant to the authority granted to it by Section 204 (a) (2) of the Hawaiian Homes Commission Act, 1920, as amended (HHCA), is authorized to grant leases for the use of Hawaiian home lands for public purposes;

WHEREAS, LESSOR, pursuant to Chapter 171-95 of the Hawaii Revised Statutes, is authorized to dispose of its lands to renewable energy producers without public auction through direct negotiation;

WHEREAS, on January 27, 2009, the Hawaiian Homes Commission approved LESSOR's Energy Policy, entitled *Ho'omaluo*, to enable native Hawaiians and the broader community working together to lead Hawaii's effort to achieve energy self-sufficiency and sustainability;

WHEREAS, the Hawaiian Homes Commission at its meeting of May 18, 2010 also approved the issuance of a General Lease to Kalaelo Solar One, LLC for the development, operation, management and maintenance of a solar power production facility;

WHEREAS, the premises, which is a portion of a larger 137-acre parcel, is not a lot of record (i.e., not subdivided); however, Hawaii Revised Statutes Chapter §201N-14 provides an exemption from subdivision requirements for the development and operation of renewable energy projects; and

WHEREAS, LESSOR has determined that the lease established herein is essential for the development, operation, management and maintenance of a renewable energy production facility.

NOW, THEREFORE, LESSOR, in consideration of the rent to be paid and the terms, covenants and conditions herein contained to be kept, observed and performed on the part of LESSEE, it successors and approved assigns, hereby grants and conveys unto LESSEE:

**ARTICLE ONE**  
**DEMISE**

1. **Lease.** LESSOR, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of LESSEE to be kept, observed and performed, does lease to LESSEE, and LESSEE does lease from LESSOR, those certain premises located at Kalaeloa, Island of Oahu, Hawaii, comprising 34.0 acres, more or less, of Hawaiian Home Lands, more particularly identified as a portion of Tax Map Key No. (1) 9-1-13:28, and described in **Exhibit "A"** and as shown on the map marked **Exhibit "B"**, attached hereto and made a part hereof (the "Premises").

2. **Term.** The Premises are demised unto LESSEE TO HAVE AND TO HOLD, together with all buildings, improvements, tenements, rights, easements, privileges appurtenant thereto, but subject to the terms and conditions of this Lease, for a term commencing on the Effective Date and ending as of midnight on September 2, 2032, unless sooner terminated as hereinafter provided.

3. **Community Benefits.** LESSEE agrees to invest 1% of the System's (defined below) net annual profit to fund a renewable energy program benefiting native Hawaiians on the island of Oahu, such as a vocational curriculum administered through the Hawaiian Language Immersion Schools or other educational facilities selected by LESSOR. Funds could also be used to establish a short certification course for students interested in learning about renewable energy. Additionally, as part of the educational outreach, LESSEE is willing to make presentations in various schools selected by LESSOR, which will cover all forms of alternative energy as well as provide career opportunity information.

**ARTICLE TWO**  
**RESERVATIONS AND RIGHT OF WITHDRAWAL**

RESERVING UNTO LESSOR THE FOLLOWING:

**Minerals and Waters.**

(a) All minerals as hereinafter defined, in, on, or under the Premises, except that the right to prospect for, mine and remove such minerals shall be suspended during the term of this Lease. "Minerals," as used herein, shall mean any and all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under any land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in construction in furtherance of LESSEE's permitted activities on the demised Premises and not for sale to others. This provision is intended only to govern extraction of minerals and not to impair in any manner LESSOR's ownership of the mineral rights pursuant to Sections 171-58 and 182-2 of the Hawaii Revised Statutes.

(b) All surface waters, ground waters, and water systems, appurtenant to the Premises, provided that such reservation shall not include the right to enter the Premises to capture, divert, or impound the same or to occupy and use any of the Premises in the exercise of this reserved right.

2. Prehistoric and Historic Remains. LESSOR has reviewed its files and records and determined that it has no information, reports or inspections reflecting that there are any prehistoric or historic remains or sites of archaeological significance present at the Premises. If, however, any area is rendered unsuitable for development as a result of the discovery of sites of archaeological significance or prehistoric or historic remains, such sites or remains shall be excluded from the Premises demised to LESSEE with an equitable adjustment of the rental payable hereunder determined in the manner provided in Section 5 of this Article Two. Except as provided above, LESSEE assumes the risk of any sites of archaeological significance or prehistoric or historic remains found on the Premises, including the risk of any delays arising out of the investigation, or the protection or removal of such sites or remains. Without limiting the generality of the foregoing, if LESSEE determines, in its sole discretion, that the area to be excluded from the Premises demised hereunder shall render the remainder of the Premises unusable by LESSEE or unsuitable for LESSEE's purposes, LESSEE shall have the right to terminate this Lease without penalty upon thirty (30) days written notice to LESSOR.

3. Right of Withdrawal. The right to withdraw all or any portion of the Premises for the purposes of the Hawaiian Homes Commission Act, 1920 (the "Act"), as reserved by Section 204(a)(2) of the Act. The right to withdraw reserved under this Section 3 of Article Two shall be exercised only after not less than two (2) years prior written notice to LESSEE. As a condition to the exercise by LESSOR of any rights reserved in this Section 3 of Article Two, just compensation shall be paid to LESSEE for any of the Premises and/or LESSEE's improvements so withdrawn or rendered unsuitable for LESSEE's intended use, which amount is to be determined in the manner set forth in Section 5 of this Article Two, and the annual base rental under this Lease will also be proportionately reduced also as provided in Section 5 of this Article Two.

4. Reservation of Easements in Favor of LESSOR. LESSOR hereby reserves the right and option, with the reasonable consent of LESSEE, to create, designate, grant and relocate from time to time, at its sole cost and expense, any and all necessary easements for underground utilities and services, including drainage, water, sewer, electricity and other utilities under, across and through the Premises, provided that (a) such easements do not cross through or under any permanent structures or any solar energy generating equipment, generators, energy storage systems, control houses constructed on the Premises or planned to be constructed on the Premises, and (b) the work to construct and install any such easements shall be done, and the easement shall be utilized, in such a fashion as to cause no disruption with LESSEE's operations or use of the Premises. Upon completion of any such work by LESSOR the surface of the Premises shall be returned, at LESSOR's sole cost and expense, to substantially the same condition as it was prior to installation of any underground utility.

5. Compensation for Takings, Withdrawal and other Entry or Actions Reserved in Favor of LESSOR. In the event all or any portion of the Premises is taken or withdrawn, or



LESSEE is denied the practical and economic use thereof by any other entry or actions or matters reserved to LESSOR under this Lease, then and in any such event, LESSEE and/or those claiming by, through or under LESSEE will be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain. If at any time during the term, a portion, but not all, of the Premises should be taken or withdrawn, or LESSEE is denied the practical and economic use of such portion, then and in any such event, the annual base rental shall be proportionately reduced based upon the ratio between the fair market value of the Premises prior to such taking, withdrawal, or use denied to the fair market value of the Premises remaining after such taking, withdrawal, or use denial. In such event, LESSEE shall also be entitled to receive from LESSOR a portion of the value of LESSEE's permanent improvements situated on the taken, withdrawn, or use denied portion of the Premises in the proportion that the unexpired term of the Lease bears to the entire term of the Lease, provided, that LESSEE may, in the alternative, remove and relocate its improvements to the remainder of the Premises occupied by LESSEE. Where the portion taken, withdrawn, or use denied renders the remainder of the Premises unusable in LESSEE's reasonable determination, LESSEE shall have the option to surrender this Lease in accordance with Section 17 of Article Four below or partially surrender this Lease as to the portion of the Premises so affected, and be discharged and relieved from any further liability therefor. In the event LESSEE shall not exercise such option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected, then the annual base rental for the balance of the term shall be abated and adjusted in an equitable manner as set forth above. In the event that LESSEE reasonably exercises its option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected by reason of a partial taking, withdrawal or use denial, LESSEE shall be entitled to just compensation as if LESSOR had elected to take, withdraw or deny the use of the entire Premises or the portion of the Premises so affected under the Lease and LESSEE will be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises or the portion of the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain as more particularly set forth above.

### **ARTICLE THREE**

#### **RENTAL**

Commencing on the earlier of March 3, 2012 or the date LESSEE places its solar energy generating facility in service, LESSEE shall pay to LESSOR at the office of the Department of Hawaiian Home Lands, Honolulu, Oahu, State of Hawaii, a net annual rental as provided hereinbelow, payable in advance, without notice or demand and without any set-off or deduction, in equal monthly installments, as follows:

Lease years 1 through 10: Three Hundred and Fifty-Five Thousand Two Hundred Dollars (\$355,200.00) per annum (\$29,600.00) per month;

Lease years 11 through 15: Four Hundred and Forty-Four Thousand Dollars (\$444,000.00) per annum (\$37,000 per month); and

Lease years 16 through 20: Four Hundred and Ninety-Nine Thousand Five Hundred Dollars (\$499,500.00) per annum (\$41,625.00 per month).

The Chairman of the HHC (Chairman) shall be authorized to extend the term of this Lease for good cause to be shown by LESSEE or as agreed to through negotiations with LESSEE.

LESSOR holds LESSEE's good faith deposit in the amount of \$25,000.00. This amount will be applied to pay the first rents coming due from LESSEE under this Lease.

#### ARTICLE FOUR

##### THE PARTIES HEREIN COVENANT AND AGREE AS FOLLOWS:

1. Payment of Rent. LESSEE shall pay the rent to LESSOR at the times, in the manner and form provided in this Lease and at the place specified above, or at any other place LESSOR may from time to time designate, in legal tender of the United States of America.

2. Taxes and Assessments. (a) LESSEE shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which the Premises or any part, or any improvements, or LESSOR or LESSEE in respect thereof, are now or may be assessed by governmental authorities during the term of this Lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, LESSEE shall be required to pay only those installments, together with interest, which become due and payable during the term; (b) LESSEE shall reimburse to LESSOR, upon demand, any and all conveyance and transfer taxes payable with respect to this transaction, or with respect to any document to which LESSEE is a party, creating or transferring an interest or an estate in the Premises; and (c) LESSEE shall have the right to contest any tax, rate, assessment or other charge imposed against the Premises provided, however, that any such proceeding shall be brought by LESSEE only after payment by LESSEE as hereinabove provided of such taxes, assessments or other charges or impositions if required by law as a condition to bringing such proceeding, and if any such proceeding be brought by LESSEE, LESSEE shall defend, indemnify and save harmless LESSOR against any and all loss, costs or expenses of any kind that may be incurred by or imposed upon LESSOR in connection therewith. LESSOR agrees to reasonably cooperate with LESSEE in any application or proceeding to contest such tax, rate, assessment or other charge, provided that all reasonable costs and expenses of LESSOR incurred in connection therewith shall be paid by LESSEE.

3. Utility Services. LESSEE shall pay or caused to be paid all utility charges, duties, rates and, other similar outgoings, including water, sewer, gas, refuse collection, recycling, relocation of utility poles and lines or any other charges, as to which the Premises or any part, or any improvements, or LESSOR or LESSEE in respect thereof, may become liable for during the term, whether assessed to or payable by LESSOR or LESSEE. LESSEE, at its sole cost and expense, shall be responsible for bringing any and all necessary utility connections to the Premises for its contemplated improvements. Sandwich Isles Communications, Inc. shall provide telephone and broadband service to the Premises.

4. Improvements Required by Law. LESSEE will, at LESSEE's own expense during the whole of the term, make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Premises or any part thereof.

5. Observance of Laws. LESSEE will at all times during the term keep the Premises in a strictly safe, clean, orderly and sanitary condition, free of any nuisance or improper or offensive use, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Premises or any improvement thereon or use thereof, and will defend, indemnify and hold harmless LESSOR against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance by LESSEE of said laws, ordinances, rules and regulations or of this covenant.

6. Inspection of Premises. Upon not less than (5) days' prior written notice, LESSEE will permit LESSOR and its agents at all reasonable times during the term of this Lease to enter the Premises and examine the state of repair and condition of the Premises; provided that LESSOR shall not interfere with any of LESSEE's equipment or operations during any such entry. LESSEE will repair and make good at LESSEE's own expense all defects required by the provisions of this Lease to be repaired by LESSEE of which written notice shall be given by LESSOR or its agents within thirty (30) days after the giving of such notice, or if such defect is not reasonably susceptible to repair within said thirty (30) day period, LESSEE shall undertake to repair such defect within said thirty (30) day period and shall diligently and expeditiously proceed to complete the steps or action necessary to repair the defect. If for any reason LESSEE shall fail to commence and complete such repairs within the time period specified herein, LESSOR may, but shall not be obligated to, make or cause to be made such repairs and shall not be responsible to LESSEE or anyone claiming by, through or under LESSEE for any loss or damage to the occupancy, business or property of any of them by reason thereof (except to the extent such loss or damage is the result of the gross negligence or willful misconduct of LESSOR or LESSOR's agents or employees in effecting any such repairs), and LESSEE will pay to LESSOR, within thirty (30) days following written demand by LESSOR, and as additional rent, all costs and expenses paid or incurred by LESSOR in connection with such repairs.

7. Improvements.

(a) Governmental Approvals and Permits. Before commencing any construction of buildings or improvements on the Premises, LESSEE shall seek and secure all approvals and permits which may be required from any governmental authority having jurisdiction thereof, including, without limitation, governmental requirements from time to time in effect regarding land, air and water use or emissions and noise emissions and Hazardous Materials. LESSEE shall bear all costs and expenses of obtaining the necessary approvals and permits.

(b) Construction of Improvements. LESSEE will not construct or place on the

Premises any building or other improvement, including fences and walls, nor make any additions or structural alterations costing more than Fifty Thousand Dollars (\$50,000) to any building thereon, nor erect or place any signs or other exterior fixtures on the Premises, except in accordance with plans and specifications, including a detailed plot plan, which shall be prepared by a licensed architect or licensed engineer, first submitted by LESSEE and approved in writing by LESSOR, which approval shall not be unreasonably withheld, delayed or conditioned. In connection with any request for approval of plans by LESSEE, LESSOR may, but shall not be obligated to, retain the services of an architect and/or engineer, and the reasonable fees of such architect and/or engineer to LESSOR shall be reimbursed to LESSOR by LESSEE. LESSOR may without further reason withhold approval of any alterations, additions and improvements if the plans or specifications thereof are not acceptable to the architect or engineer (if any) retained by LESSOR to review the same. LESSOR's approval of any plans or suggestions for the revision thereof shall not be construed to be an agreement or representation on LESSOR's part of adequacy or suitability for their intended purpose, of the alterations, additions and improvements shown or their compliance with applicable building codes or other governmental requirements.

(c) Ownership of the System. Notwithstanding anything to the contrary herein, LESSOR acknowledges, understands and agrees that the System, including all components thereof, are LESSEE's personal property and are not fixtures, and that the System is LESSEE's personal property and may be removed by LESSEE at any time.

(d) Bond and Financial Information. LESSEE will before commencing construction of any improvements within the Premises in excess of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) deposit with LESSOR either: (i) copies of a contractor's performance bond and a labor and materials payment bond naming LESSOR as an additional obligee thereunder in an amount equal to one hundred percent (100%) of the estimated construction cost of the improvements to be made on the Premises, with a surety reasonably satisfactory to LESSOR, to assure the performance by the contractor of the contract for the construction of such improvement on the Premises, and the completion of such construction work, free and clear of all mechanics' and materialmen's liens; or (ii) a written guaranty of performance and payment of the construction contract(s) for the improvements planned for the Premises from a person or entity of size and substance satisfactory to LESSOR, in LESSOR's reasonable judgment, in favor of LESSOR, and guaranteeing the performance of the construction contract(s) and completion of such work free and clear of all mechanic's and materialmen's liens; or (iii) an irrevocable standby letter of credit issued by a recognized financial institution, as reasonably determined by LESSOR to be satisfactory, to assure performance of any construction contracts for and payment of all labor, materials, services or other work done by or on behalf of LESSEE (or any affiliated parties, contractors, materialmen or subcontractors) in connection with the improvements planned for the Premises. LESSEE shall also provide LESSOR with such information and evidence as LESSOR may reasonably require to assure LESSOR that LESSEE is able to and will make all payments required by the construction contract(s) for the improvements to be made to the Premises, as and when LESSEE is required to do so.

(e) Compliance with the Americans with Disabilities Act of 1990.

(i) Applicable Laws. LESSEE shall cause drawings and specifica-

tions to be prepared for, and shall cause to be performed, any construction, alteration or renovation of the Premises, including signage, in accordance with all applicable laws, ordinances and regulations of all duly constituted authorities, including, without limitation, as applicable, Title III of the Americans with Disabilities Act of 1990 (the "ADA"), 42 U.S.C. §§ 12181-12183, 12186(b)-12189, the ADA Accessibility Guidelines promulgated by the Architectural and Transportation Barriers Compliance Board, the public accommodations title of the Civil Rights Act of 1964, 42 U.S.C. § 2000a et. seq., the Architectural Barriers Act of Rehabilitation Act of 1968, 42 U.S.C. 4151 et. seq., as amended, Title V of the Rehabilitation Act of 1973, 29 U.S.C. § 790 et seq., the Minimum Guidelines and Requirements for Accessible Design, 36 C.F.R. Part 1190, and the Uniform Federal Accessibility Standards, as the same are in effect on the date hereof and may be hereafter modified, amended or supplemented (all such laws, ordinances, regulations and guidelines regarding access collectively called "Public Accommodations Laws").

(ii) Responsibility for Compliance. Notwithstanding LESSOR's review of such drawings and specifications, and whether or not LESSOR approves or disapproves such drawings and specifications, LESSEE and not LESSOR shall be responsible for the compliance of such drawings and specifications with all Public Accommodations Laws. LESSEE shall defend, pay, indemnify and hold LESSOR harmless against all reasonable costs and expenses (including reasonable attorney's fees), losses, damages and liabilities incurred by LESSOR which may be attributable to: (A) LESSEE's alleged failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation; (B) LESSOR's investigation and handling (including the defense) of LESSEE's proven failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; (C) any amounts assessed against LESSOR pursuant to any Public Accommodations Law based upon LESSOR's ownership of the Premises; and (D) LESSOR's enforcement of this paragraph, whether or not suit is brought therefore. All the above amounts shall constitute additional rent and shall be payable on demand with interest at the rate of ten percent (10.0%) per annum.

8. Repairs to Improvements. LESSEE shall at its own expense, keep, repair and maintain all buildings and other improvements now existing or hereafter constructed or installed on the Premises in good and safe order, condition and repair, reasonable wear and tear excepted.

9. Assignment.

(a) No Assignment Without Consent. LESSEE shall not assign this Lease without the prior written consent of LESSOR, which consent LESSOR shall not unreasonably withhold, delay or condition. Any assignment without LESSOR's prior express written consent shall be void.

(b) Assumption of Lease. Any assignment of this Lease shall be specifically made and therein expressly stated to be made subject to all terms, covenants and conditions of this Lease, and the assignee therein shall expressly assume and agree to all such terms, covenants and conditions.

(c) Compliance with Hawaii Revised Statutes §171-36(a)(5). LESSOR may withhold its consent to any assignment unless the assignment meets the requirements of Hawaii Revised Statutes §171-36(a)(5), or any other successor statute imposing conditions on the assignment of leases of Lessor's lands.

(d) No Change of Use. No assignment will be permitted if the assignee contemplates or proposes any change in the use of the Premises from that expressly permitted by this Lease.

(e) LESSOR's Response. LESSOR shall respond to any request for its consent to an assignment of this Lease within thirty (30) days following LESSOR's receipt of all financial statements, documents and other information reasonably necessary for LESSOR to make its determination (or within such longer time as may be reasonably required by it and of which it shall notify LESSEE within such thirty (30) day period). If LESSOR shall fail to approve or disapprove of a request for consent within the thirty (30) day period as the same may be extended, LESSOR's approval shall be conclusively presumed.

(f) "Assignment" Defined. The term "assignment" as used in this Lease shall mean and include one or more sales or transfers by operation of law or otherwise by which:

(i) if LESSEE is a corporation, an aggregate of fifty percent (50%) or more of the total common stock or any class of voting stock of LESSEE;

(ii) if LESSEE is a partnership, an aggregate of fifty percent (50%) or more of the total partnership interests of LESSEE or a change of control of any general partner of LESSEE;

(iii) if LESSEE is a limited liability company, whether member-managed or manager-managed, an aggregate of fifty percent (50%) or more of the total membership interests of LESSEE or a change of control of any managing member of LESSEE; or

(iv) if LESSEE is any other form of entity, an aggregate of fifty percent (50%) or more of the legal, beneficial or other cognizable interests therein or in the governance, administration or control thereof;

shall become vested in one or more individuals, firms, associations, corporations, partnerships, limited liability companies or other entities, or any derivative or combination thereof, who or which did not own directly not less than a ten percent (10%) interest, legally or equitably, in LESSEE as of the Effective Date or as of the date of LESSEE's subsequent acquisition of this Lease by assignment, with the ownership of such interests in LESSEE being determined in accordance with the principles enunciated in Sections 318 and 544 of the Internal Revenue Code of 1986; provided, however, that the foregoing definition shall not apply with respect to a corporate LESSEE whose capital stock is listed on a recognized stock exchange or on the NASDAQ; provided, further that, if LESSEE is a corporation, partnership, limited liability company or other form of entity, a change in ownership of the stock, partnership interest,

membership interest or other form of legal, beneficial or other cognizable interest, respectively, of LESSEE resulting from the death of a stockholder, partner, member or interest holder, respectively, shall not be deemed a default hereunder if the decedent's shares or interests pass to a surviving spouse and/or issue or to a trust for the primary benefit of such spouse or issue.

10. Subletting. LESSEE shall not, without the prior written consent of LESSOR, which consent will not be unreasonably withheld or delayed, have the right to sublease all or any portion of the Premises.

11. Liens. LESSEE will not commit or suffer any act or neglect by which the Premises or the respective estates of LESSEE or LESSOR therein shall at any time during the term become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, including mechanics' and materialmen's liens, and will indemnify, defend, save and hold LESSOR harmless from and against all loss, cost and expense with respect thereto (including reasonable attorneys' fees). If any order directing the attachment of any lien for work, labor, services or materials done for or supplied to the Premises regardless of who contracted therefor is filed against the Premises, LESSEE shall have sixty (60) days from the date of filing in which to cause such lien to be discharged of record by payment, deposit or bond or otherwise stayed to the reasonable satisfaction of LESSOR. Subject to the foregoing, LESSEE may contest in good faith by any appropriate proceedings prosecuted in a diligent and timely manner, the amount or validity of any such attachment, judgment, lien, charge or encumbrance, and, if permitted by applicable law, upon making deposit or posting bond, may defer payment thereof until final determination of such contest. LESSEE's obligations under this Section 11 shall survive the termination of this Lease.

12. Permitted Uses. The Premises will be used only for the following purposes: the development, installation, operation, management, maintenance, repair, and removal of a solar power production facility, including the construction and installation of solar thermal panels (collectors), a thermal storage system and a "power block" that generates alternating electrical current to be fed into the Hawaiian Electric Company, Inc. ("HECO") electricity grid, as well as other facilities to be used in conjunction therewith (collectively, the "System"). In no event shall the Premises be used for the construction of any residential lots, units or projects.

13. Indemnity

(a) Except to the extent arising out of LESSOR's or its employees' or agents' negligence or willful misconduct, LESSEE will indemnify and hold LESSOR harmless from and against all liens, claims and demands for loss or damage, including property damage, personal injury and wrongful death, from (i) any cause whatsoever arising out of or in connection with the use, occupancy and enjoyment of the Premises by LESSEE or any other person thereon or claiming under it, including, without limitation, any harm resulting therefrom to LESSOR, persons claiming under LESSOR, other tenants of LESSOR, third parties, the aquifer underlying the Premises, the water therein, the soil of the Premises and surrounding lands and the air, or (ii) any failure by LESSEE to keep the Premises and sidewalks in a safe condition. LESSEE will reimburse LESSOR for all of LESSOR's costs and expenses, including reasonable attorneys' fees, incurred in connection with the defense of any such liens, claims, and demands. LESSEE

will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises at its sole risk and will hold LESSOR harmless from and against any loss or damage thereto by any cause whatsoever. The obligation to indemnify shall include all fines and penalties and all reasonable costs LESSOR may incur in connection with any such lien, claim and demand, including reasonable attorneys' fees and investigation costs, from the first notice that any lien, claim or demand is to be made or may be made. LESSEE shall satisfy LESSOR of its ability to so indemnify LESSOR by means satisfactory to LESSOR, which, at the discretion of LESSOR, may include any or all of insurance bonds, security deposits, sinking funds or such other means as may be approved in writing by LESSOR. LESSEE's obligations under this section shall survive the termination of other determination of this Lease and shall continue in full force and effect for the benefit of LESSOR.

(b) Immediately upon discovery thereof, LESSEE shall give written notice to LESSOR of any claims, actions or causes of action concerning the Premises, or any claims, actions or causes of actions that may subject LESSOR to liability, risk of loss or binding adjudication of rights.

14. Costs of Litigation. In case either party shall, without fault on its part, be made a party to any litigation commenced by the other party or against the other party (other than condemnation proceedings), the other party shall pay all costs, including reasonable attorney's fees and expenses incurred by or imposed on the party joined without fault on its part.

15. Insurance. At all times during the term of this Lease, LESSEE shall purchase and maintain, at LESSEE's sole expense, the following policies of insurance in amounts not less than the amounts specified below, or such other amounts as LESSOR may from time to time reasonably request, with insurance companies and on forms reasonably satisfactory to LESSOR:

(a) Commercial Property Insurance.

(i) Coverage. A policy or policies of commercial property insurance covering all buildings, structures and other improvements on the Premises, and including without limitation, all furniture, fixtures, machinery, equipment, stock and any other personal property owned and/or used in LESSEE's business, whether made or acquired at LESSEE's, LESSOR's or at another's expense, in an amount equal to their full replacement cost at time of loss, without deduction for depreciation. The insurance shall be written on an Insurance Services Office, Inc. ("ISO") Commercial Property Policy - "Special Form" Causes of Loss form as from time to time filed with the Hawaii Insurance Commissioner, or its equivalent, and at a minimum such policy shall insure against destruction or damage by fire and other perils covered under such an ISO policy, with additional coverage for risk of loss by flood, hurricane and tsunami (to the extent such coverage is available at commercially reasonable cost), perils normally insured under a policy of boiler and machinery insurance, and such other hazards or risks which a prudent business person would insure against. The policy(ies) required under this Lease shall provide replacement cost coverage (exclusive only of excavation, foundations and footings), and shall include Building Ordinance/Law coverage (for increased costs of demolition and repair due to changes in building codes or zoning ordinances). Except with LESSOR's prior written consent, which shall not be unreasonably withheld, the policy shall not have a deductible amount in



excess of \$10,000 for any one occurrence.

(ii) Trust. In the event that proceeds for loss or damage are paid under any property insurance policy required by this Lease and unless otherwise agreed to in writing by LESSOR, all such loss payment proceeds shall be deposited with a trust company designated by LESSOR to receive all such proceeds, which trustee shall have its principal office in Honolulu and be authorized to exercise corporate trust powers in the State of Hawaii. The trustee shall have no obligation whatsoever to effect, maintain or renew such insurance nor to attend to any claim for lesser damage thereunder or the collection of any proceeds thereof nor to incur any expense therefor, and shall be responsible only for the proper custody and application as herein provided of all such proceeds that actually shall come into its possession. LESSEE shall pay all fees and expenses of such trustee for or in connection with its services.

(iii) Use of Proceeds. In every case of loss, all proceeds of such insurance (excluding the proceeds of any rental value or use and occupancy insurance of LESSEE) shall be immediately available to and be used as soon as reasonably possible by LESSEE for rebuilding, repairing or otherwise reinstating the same improvements in good and substantial manner according to the plan and elevation of the improvements so destroyed or damaged or according to such modified plan as shall have been first approved in writing by LESSOR. In the event that such insurance proceeds shall be insufficient, LESSEE shall make up any deficiency from its own funds; provided, however, that if the principal improvement on the Premises shall be destroyed at any time during the last ten (10) years of the term of this Lease (or any extension hereof), LESSEE shall have the option, exercisable within sixty (60) days after such casualty, to surrender this Lease subject to compliance with the provisions of Section 17 of Article Four and thereby forfeit all interest in such insurance proceeds and in any improvements remaining on the Premises, all of which shall thereupon be payable to and be the sole property of LESSOR.

(b) Liability Insurance.

(i) Commercial General Liability Insurance. Commercial general liability or commercial general liability and excess or umbrella liability insurance written on an "occurrence" form covering the use, occupancy and maintenance of the Premises and all operations of Lessee including: Premises Operations; Independent Contractors; Products - Completed Operations; Blanket Contractual Liability; Personal and Advertising Injury; Fire Legal Liability; Employees Named as Additional Insureds; Medical Expense; elevator collision; and incidental medical malpractice. Such insurance shall be written on an ISO Commercial General Liability Policy form or its equivalent.

(1) Limits. Limits for such coverage shall be not less than the following for the specified categories: Bodily Injury and Property Damage Combined Single Limit — \$3,000,000 per occurrence, subject to \$3,000,000 general aggregate per policy year; \$3,000,000 Products and Completed Operations aggregate per policy year; Personal and Advertising Injury — \$1,000,000 per person/organization per policy year, subject to \$3,000,000 general aggregate per policy year; Fire Legal Liability — \$250,000 per fire, subject to \$3,000,000 general aggregate per policy year; and Medical Expense — \$5,000 each injury.

(2) Deductible. Except with LESSOR's prior written approval which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of \$10,000 for any one occurrence.

(3) Application of General Aggregate. The policy(ies) of insurance shall further contain a provision that the general aggregate limit applies exclusively to the Premises and the operations conducted thereon.

(ii) Workers' Compensation and Employers' Liability Insurance. Workers' Compensation and Employers' Liability insurance as required by HRS Chapter 386 and regulations thereunder, as the same may be amended from time to time, for all employees of LESSEE.

(1) Limits for such coverage shall be not less than the statutory limits for Workers' Compensation and the following for Employers' Liability: \$1,000,000 Each Accident; \$1,000,000 Disease - Policy Limit; and \$1,000,000 Disease - Each Employee.

(2) The policy shall further contain an endorsement providing a waiver of subrogation in favor of LESSOR and its employees.

(iii) Business Auto Policy. Automobile Liability Insurance covering owned, non-owned, and hired autos including Contractual Liability, written on a Business Auto Policy form or its equivalent. Limits for such coverage shall be not less than the following: Bodily Injury -- \$1,000,000 each person and \$1,000,000 each accident; Property Damage -- \$1,000,000 each accident; and Personal Injury Protection/No-Fault -- Hawaii statutory limits.

(c) Umbrella Liability. Umbrella Liability Insurance providing excess coverage over Commercial General Liability, Employer's Liability, and Automobile Liability Insurance. The Umbrella Liability policy shall be written on an "occurrence" form with a limit of liability of not less than \$5,000,000 per policy year and a self-insured retention and/or deductible no greater than \$10,000.

(d) Builder's and Installation Risk. Builder's and installation risk insurance while the Premises or any part thereof are under construction, written on the Builder's Risk Completed Value form (nonreporting full coverage), including coverage on equipment, machinery and materials not yet installed but to become a permanent part of the Premises.

(e) General Policy Terms. All policies of insurance required to be maintained pursuant to this section covering loss or damage to any of LESSEE's property shall provide that the insurer is required to provide LESSOR with at least thirty (30) days (or not less than ten (10) days in the case of nonpayment of premiums) prior written notice of cancellation or non-renewal of any such insurance policy. LESSEE will pay all premiums thereon when due and will from time to time deposit promptly with LESSOR current policies of such insurance or certificates thereof. All public liability and property damage policies shall be in the joint names of and for the mutual and joint benefit and protection of LESSOR, LESSEE, and LESSEE's mortgagee(s), as their respective interests may appear, and shall contain a provision providing that LESSOR,

although named as an additional insured, shall not be denied any recovery under the policy(ies) for any loss occasioned to it, its servants, agents and employees by reason of the acts, omissions and/or negligence of LESSEE which recovery would be possible if LESSOR were not named as an additional insured. As often as any such policy shall expire or terminate, LESSEE shall procure and maintain renewal or additional policies in like manner and to like extent. All general liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which LESSOR may carry.

(f) Periodic Review of Insurance Coverages. LESSOR shall retain the right at any time, but not more frequently than once every three (3) years, to review the coverage, form, and amount of the insurance required by this Lease. If, in the reasonable judgment of LESSOR, the insurance provisions in this Lease do not provide adequate protection for LESSOR in light of then prevailing practices under leases of similar properties in the State of Hawaii, LESSOR may require LESSEE to obtain insurance sufficient in coverage, form, and amount to provide such additional protection. LESSOR's requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LESSOR shall notify LESSEE in writing of changes in the insurance requirements and LESSEE shall deposit copies of acceptable insurance policies or certificates thereof with LESSOR incorporating the reasonably required changes within sixty (60) days of receipt of such notice from LESSOR.

16. Landscaping. LESSEE shall, at all times during the term of the Lease, landscape the open areas of the premises and shall keep and maintain the premises and any and all improvements, including all portions thereof, and any and all equipment and personal properties of LESSEE upon the premises in a strictly clean, neat, orderly and sanitary condition, free of waste, rubbish and debris and shall provide for the safe and sanitary handling and disposal of all trash, garbage and other refuse resulting from its activities on the premises. All shrubbery and overgrowth within the Premises shall be kept neatly trimmed.

17. Surrender. At the end of the term or other sooner determination of all or a portion of this Lease, LESSEE will peaceably deliver up to LESSOR possession of the land hereby demised, including all buildings and other improvements upon or belonging to the same, by whomsoever made, in good repair, order and condition, except for reasonable wear and tear, and in strictly clean, safe and sanitary condition; provided, however, that if LESSEE is not in default hereunder, it may then remove any buildings, improvements, personal property, and trade fixtures, including without limitation any or all of the System, but shall repair promptly to LESSOR's satisfaction all damage caused by such removal; provided, further, that if LESSOR, in its sole discretion, shall determine that any at or above grade improvements or portions thereof should be removed and shall give LESSEE written notice of such determination within thirty (30) days of such termination, LESSEE, at no cost to LESSOR and with as little damage to the Premises as is reasonably possible, shall remove promptly said at or above grade improvements or portions thereof in accordance with applicable law and shall leave the Premises in clean and orderly condition free of all debris.

Upon such termination or sooner determination, LESSEE shall, at LESSEE's cost and expense, provide LESSOR with evidence satisfactory to LESSOR that LESSEE has fully

complied with all applicable law or orders by any governmental authority having jurisdiction therefor, including, without limitation, full compliance with any closure plan filed or required to be filed with any such governmental authority and removal from the Premises of all Hazardous Materials and other materials that may cause damage or injury to the environment or health.

If, within thirty (30) days after such termination or sooner determination of this Lease, such evidence shall not have been provided LESSOR, or if LESSOR shall have requested removal of improvements and LESSEE shall not have removed said improvements, LESSOR may effect such full compliance or removal on behalf of LESSEE. All costs incurred by LESSOR in effecting such compliance or removal shall be at LESSEE's expense and LESSEE will, within thirty (30) days from LESSEE's receipt of demand by LESSOR, reimburse LESSOR for such costs, together with interest as provided in Section 10 of Article Five of this Lease. Until such full compliance or removal is completed, either by LESSEE or LESSOR, and all costs therefor have been paid by LESSEE or reimbursed by LESSEE to LESSOR, together with interest thereon, if any, the Premises and this Lease shall not be deemed surrendered even though LESSEE has vacated the Premises, and LESSEE shall continue to incur and pay annual rent on the Premises or portion thereof being surrendered in an amount equal to twice (2X) the total of annual rent paid by LESSEE during the Lease year just preceding termination, prorated for the period of time from termination to the time surrender is completed.

LESSEE shall not be relieved of its obligations under this Lease until surrender is completed in accordance with the provisions of this section. Final inspection and release of the Premises by concerned governmental agencies, if any, and by LESSOR shall be a condition precedent to completion of surrender and termination of LESSEE's obligations hereunder. Nothing herein shall be deemed to relieve LESSEE of an obligation, such as the obligation to indemnify LESSOR, which by its specific terms survives termination.

18. Processing Fees/Documentation. LESSEE agrees to pay to LESSOR, LESSOR's standard fees for commercial tenants for LESSOR's processing of consents and assignments and providing documents required or authorized by the terms, covenants, and conditions of this Lease.

19. Hazardous Materials.

LESSEE shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of or allow to exist on, under or about the Premises any Hazardous Materials, except in compliance with all applicable Hazardous Materials Laws.

LESSEE shall immediately advise LESSOR in writing of (i) any and all enforcement, clean up, removal, mitigation or other governmental or regulatory actions instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Premises, (ii) all claims made or threatened by any third party against LESSEE or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials, (iii) LESSEE's discovery of any occurrence or condition on the Premises or any real property adjoining or in the vicinity of the Premises which could subject LESSEE, LESSOR or the Premises to any restrictions on ownership, occupancy, transferability or use of the Premises

under any Hazardous Materials Laws.

LESSEE shall cause any Hazardous Materials on the Premises to be (A) remediated on-site in accordance with applicable Hazardous Materials Laws, or (B) removed from the Premises for remediation or disposal and to be transported solely by duly licensed Hazardous Materials transporters to duly licensed disposal facilities for final disposal to the extent required by and in accordance with applicable Hazardous Materials Laws, and shall deliver to LESSOR copies of any hazardous waste manifest reflecting the proper disposal of such Hazardous Materials. Except in emergencies or as otherwise required by law, LESSEE shall not take any remedial or removal action in response to the presence, release or threatened release of any Hazardous Materials on or about the Premises without first giving written notice of the same to LESSOR and obtaining LESSOR's written consent thereto, which consent shall not be unreasonably withheld, delayed or conditioned.

LESSEE shall not enter into any legal proceeding or other action, settlement, consent decree or other compromise with respect to any Hazardous Materials claims without first notifying LESSOR of LESSEE's intention to do so and affording LESSOR the opportunity to join and participate, as a party if LESSOR so elects, in such proceedings. Except as provided above and except to the extent caused by LESSOR's or its employees' or agents' negligence or willful misconduct, LESSEE shall be solely responsible for and shall indemnify, defend and hold harmless LESSOR and LESSOR's employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to LESSEE's use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials, on, under or about the Premises (except those released on the Premises prior to the commencement of this Lease, or after such commencement by LESSOR or its agents), including (A) the costs of any required or necessary removal, repair, cleanup or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial or other required plans; and (B) all reasonable costs and expenses incurred by LESSOR in connection therewith, including, without limitation, reasonable attorneys' fees.

Within thirty (30) days of receipt thereof, LESSEE shall provide LESSOR with a copy of any and all environmental assessments, audits, studies and reports regarding LESSEE's past or current activities on the Premises or the environmental condition of the Premises, in each case, in LESSEE's possession or control.

The covenants of this Section 19 of Article Four, including, without limitation, the indemnification provisions, shall survive the expiration or termination of this Lease, or any termination of LESSEE's interest in the Premises.

20. Underground Storage Tank (UST). A "UST" is any tank, including underground piping connected to the tank that has at least ten percent (10%) of its volume underground and is used for the storage of certain regulated substances like petroleum or certain hazardous chemical. Prior consent and approval from LESSOR is required for the installation of any UST on the Premises, which consent and approval shall not be unreasonably withheld, delayed or conditioned. All USTs are considered trade fixtures and are to be removed upon termination or

expiration of the Lease by LESSEE. IF LESSEE has installed a UST, then and in such event, LESSEE shall arrange, at its sole cost and expense, for the removal of any such UST at the end of the term of this Lease and upon such removal shall arrange to be provided to LESSOR within ninety (90) days after the end of such Lease term a satisfactory UST closure report prepared by a recognized Hawaii environmental engineer and accepted by the Department of Health of the State of Hawaii. If any clean up procedures and/or remediation is necessary as a result of the installation of such UST then and in such event, LESSEE shall arrange to have all such work done, at LESSEE's sole cost and expense, by an environmental engineering company reasonably acceptable to LESSOR, in accordance with all then applicable regulations and requirements of the State of Hawaii, Department of Health.

21. Non-warranty. LESSOR does not make any warranties with respect to the condition of the Premises, and the Premises are being leased "AS IS". LESSEE acknowledges that (a) the Premises may require additional soil compaction, filling, grading and site preparation and may have expansive soils, boulders, cavities and other such soils conditions, and (b) LESSOR's surrounding lands may be subdivided, developed, improved, sold, operated and otherwise used in any lawful way and LESSOR makes no warranty or representation, express or implied, as to the subdivision, development, improvement, sale, operation and use of the LESSOR's surrounding lands by it or others. Any provisions of this Lease which permit or provide for abatement of the annual base rental in specified circumstances shall not be deemed to be warranties.

22. LESSOR's Title to Premises. LESSOR represents, warrants, and covenants that LESSOR has lawful title to (or a valid leasehold interest in) the Premises. LESSOR shall not sell, lease, assign, mortgage, pledge or otherwise alienate or encumber (each, a "Transfer") the Premises unless LESSOR shall have given LESSEE at least fifteen (15) days' prior written notice thereof, which notice shall identify the transferee, the Premises to be transferred and the proposed date of transfer. LESSOR agrees that this Lease shall run with the Premises and survive any transfer of any of the Premises. In furtherance of the foregoing, LESSOR agrees that it shall cause any purchaser, lessee, assignee, mortgagee, pledge or party to whom a lien has been granted to execute and deliver to LESSEE a document pursuant to which such party acknowledges and consents to LESSEE's rights in the Premises as set forth herein including, without limitation, an acknowledgement by the transferee that it has no interest in the System and shall not gain any interest in the System by virtue of LESSOR's transfer.

23. No Interference With and Protection of the System. LESSOR will not conduct activities on, in, about or around the Premises that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.

24. Insolation. LESSOR acknowledges and agrees that access to sunlight ("insolation") is essential to the value to LESSEE of the leasehold interest granted hereunder and is a material inducement to LESSEE in entering into this Lease. Accordingly, LESSOR shall not knowingly permit any interference with insolation on and at the Premises. If LESSOR becomes aware of any potential development or other activity on adjacent or nearby properties under its control that could diminish the insolation to the Premises, LESSOR shall advise LESSEE of such information.

## ARTICLE FIVE

IT IS HEREBY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Mortgage. Upon due application and with the written consent of LESSOR, which consent shall not be unreasonably withheld or delayed, LESSEE may mortgage this Lease, or any interest therein. LESSOR covenants and agrees to promptly review any request by LESSEE for consent to a mortgage to finance any portion of the construction of the improvements or facilities to be developed and constructed on the Premises under this Lease and any permanent loan or loans replacing any such construction loans. Any mortgage consented to by LESSOR pursuant to this Section 1 of Article Five shall be deemed an "Approved Mortgage" for purposes of all other provisions of this Lease. If the mortgage or security interest is to a recognized lending institution, authorized to do business as such in either the State of Hawaii or elsewhere in the United States, the consent shall extend to foreclosure and sale of LESSEE's interest at the foreclosure to any purchaser, including the Mortgagee, without regard to whether or not the purchaser is qualified to lease, own or otherwise acquire and hold the Premises or any interest in the Lease. The interest of the Mortgagee or holder shall be freely assignable. The term "holder" shall include the Mortgagee and an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these federal agencies.

If an Approved Mortgagee of this Lease (the "Mortgagee") shall deliver to LESSOR an executed counterpart of the leasehold mortgage (the "Mortgage") with the recording information duly noted thereon as certified by a title company doing business in the State of Hawaii, together with a written notice setting forth the name and address of Mortgagee, then, until the time, if any, that the Mortgage shall be satisfied or Mortgagee shall give to LESSOR written notice that the Mortgage has been satisfied, the following provisions shall be applicable:

(a) No mutual cancellation, surrender, acceptance of surrender or modification of this Lease shall be binding upon Mortgagee or affect the lien of the Mortgage, without the prior written consent of Mortgagee.

(b) No notice, demand, election or other communication required or permitted to be given under the Lease (all of the foregoing hereinafter collectively being referred to as "notices", and each of them as a "notice") which shall be given by LESSOR to LESSEE shall be binding upon or affect Mortgagee, unless a copy of said notice shall be given to Mortgagee within the time when such notice shall be required or permitted to be given to LESSEE. In the case of an assignment of the Mortgage or change in address of Mortgagee, the assignee thereof or the Mortgagee, by notice to LESSOR, may change the address to which copies of notices are to be sent as herein provided. LESSOR shall not be bound to recognize any assignment of the

Mortgage unless and until LESSOR shall be given a notice of such assignment, including a copy thereof in the form proper for recording, together with the name and address of assignee and, thereafter, until a further assignment, the assignee named in such assignment shall be deemed to be "Mortgagee" for all purposes under this Lease. If the Mortgage is held by more than one person, corporation or entity, no provision of this agreement requiring LESSOR to give a notice or copy of any notice to Mortgagee shall be binding upon LESSOR unless and until all of the holders of the Mortgage shall designate in writing one of their number to receive all notices and copies of notices and shall have given to LESSOR an original executed counterpart of the designation in form proper for recording. All notices and copies of notices to be given to Mortgagee as provided in this section shall be given in the same manner as is provided in this Lease in respect of notices to be given by LESSOR or LESSEE.

(c) Mortgagee shall have the right (but not the obligation) to perform any term, covenant, condition or agreement and to remedy any default by LESSEE under the Lease, and LESSOR shall accept such performance by Mortgagee with the same force and effect as if furnished by LESSEE; provided, however, that Mortgagee shall not thereby or hereby be subrogated to the rights of LESSOR.

(d) If LESSOR shall give a notice of default to LESSEE pursuant to the provisions of this Lease, and if such default shall not be remedied within the applicable cure period provided for in this Lease, and LESSOR shall thereby, or otherwise, become entitled to give a notice of election to terminate the Lease, then, before giving any such notice of election to terminate the Lease, LESSOR shall give to Mortgagee not less than sixty (60) days' additional written notice of LESSEE's failure to cure the default, and shall allow Mortgagee such additional sixty (60) days within which to cure the default, provided, however, that (i) if the default can be cured by the payment of money, the additional time for Mortgagee to cure shall be limited to thirty (30) days, and provided further (ii) if the default cannot practicably be cured by Mortgagee without taking possession of the Premises, Mortgagee shall proceed diligently to obtain possession of the Premises as Mortgagee (through appointment of a receiver or otherwise), and, upon obtaining possession, shall promptly commence and duly prosecute to completion such action as may be necessary to cure such default. Mortgagee shall not be required to continue to proceed to obtain possession, or to continue in possession as mortgagee, of the Premises pursuant to this subsection (d), if and when such default shall be cured. Nothing herein shall preclude LESSOR from exercising any of its rights or remedies with respect to any other default by LESSEE during any period when LESSOR shall be forbearing in the termination of this Lease as above provided, but in such event Mortgagee shall have all of the rights and protections herein provided.

(e) LESSEE may delegate irrevocably to Mortgagee the authority to exercise any or all of LESSEE's rights under this Lease, but no such delegation shall be binding upon LESSOR unless and until either LESSEE or Mortgagee shall deliver to LESSOR a signed counterpart, in form proper for recording, of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Mortgage itself, in which case the service upon LESSOR of an executed counterpart of the Mortgage in accordance with this Section, together with a written notice specifying the provisions therein which delegate such authority to Mortgagee, shall be sufficient to give LESSOR notice of such delegation. Any



provision of this Lease which gives to Mortgagee the privilege of exercising a particular right of LESSEE hereunder on condition that LESSEE shall have failed to exercise such right shall not be deemed to diminish any privilege which Mortgagee may have, by virtue of a delegation of authority from LESSEE, to exercise such right without regard to whether or not LESSEE shall have failed to exercise such right.

(f) In the event of the commencement of a bankruptcy proceeding by or against LESSEE, the Mortgagee shall have the option, and LESSOR shall recognize the Mortgagee's right, within the statutory time period or any extension thereof provided under Section 365 of the Bankruptcy Code for the rejection or assumption of lease, to obtain or cause LESSEE and/or trustee in bankruptcy to obtain:

(i) An extension of the period during which the Lease may be assumed or rejected; or

(ii) An abandonment of the leasehold estate by LESSEE and/or trustee in bankruptcy court pursuant to Section 554 of the Bankruptcy Code, as amended; or

(iii) An assumption of the Lease pursuant to Section 365 of the Bankruptcy Code, as amended.

In the event of the commencement of a bankruptcy proceeding by or against LESSEE, LESSOR agrees and acknowledges for the exclusive benefit of the Mortgagee and any person or entity acquiring an interest in the Lease in or in lieu of the foreclosure of the Mortgage, that the actual or deemed rejection of the Lease under Section 365 of the Bankruptcy Code (11 United States Code Section 365) or any other law having similar effect, shall not effect a termination of the Lease or affect or impair the Mortgagee's lien thereon or rights with respect thereto, provided however, that this provision is not intended and shall not be deemed to confer any rights or benefits upon LESSEE or LESSEE's bankruptcy trustee, and upon written request of the Mortgagee delivered to LESSOR within thirty (30) days following the Mortgagee's receipt of written notice of such actual or deemed rejection of the Lease, LESSOR will, at the option of the Mortgagee, execute and deliver to the Mortgagee or its designee an instrument (in form acceptable to Mortgagee or its designee) recognizing, confirming and giving legal effect to the continued existence of the Lease, with its original validity and priority, in favor of the Mortgagee or its designee (hereinafter called the "Confirmation of Lease"), subject to the lien of the Mortgage and any lien or encumbrance prior to the lien of the Mortgage, upon and subject to the following terms and conditions:

(i) The Mortgagee shall pay or cause to be paid to LESSOR at the time of the execution and delivery of the Confirmation of Lease, any and all sums which are at the time of execution and delivery thereof due under the Lease and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees, which LESSOR shall have incurred by reason of the actual or deemed rejection of the Lease and the execution and delivery of the Confirmation of Lease;

(ii) The Mortgagee or its designee shall undertake, by accepting the

Confirmation of Lease, to perform all covenants and conditions of the Lease reasonably capable of performance by the Mortgagee or such other person or entity. The Mortgagee or its designee, as the case may be, may assign the Lease or may foreclose upon the Mortgage without further consent of LESSOR and the Mortgagee or its designee shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such Lease contained and on LESSEE's part thereunder to be performed and observed from and after the date of such assignment by the Mortgagee or its designee or upon foreclosure, provided that a certified copy of such assignment be provided to LESSOR; and

(iii) The Mortgagee or its designee under the Lease shall be entitled to and shall have the same right, title and interest in and to the Premises and the buildings and improvements thereon as LESSEE had under the Lease prior to its rejection and LESSOR shall use commercially reasonable efforts to obtain the cooperation of all parties in interest such that any Confirmation of Lease made pursuant to this Agreement shall be prior to any mortgage or other lien, charge or encumbrance on the fee of the Premises which mortgage, lien, charge or encumbrance was junior to the Lease.

2. Breach. Time is of the essence of this agreement and if LESSEE shall become bankrupt, or shall abandon the Premises, or if this Lease and the Premises shall be attached or taken by operation of law, or if any assignment is made of LESSEE's property for the benefit of creditors, or if LESSEE shall fail to observe and perform any of the material terms, covenants and conditions contained in this Lease and on its part to be observed and performed, LESSOR shall deliver a written notice of the breach or default by service, as provided by Section 634-35, or 634-36, Hawaii Revised Statutes, or by registered mail, or certified mail to LESSEE at its last known address, and to each mortgagee or holder of record having a security interest in the Premises, making demand upon LESSEE to cure or remedy the breach or default within sixty (60) days from the date of receipt of the notice [if such default is by its nature not reasonably susceptible of being cured within such 60 day period, such 60 day period may be extended as necessary to provide LESSEE the opportunity to cure the default, provided LESSEE within said period commences and thereafter diligently proceeds to cure such default without interruption until such cure is completed]; provided that where the breach involves a failure to make timely rental payments pursuant to the Lease, the written notice shall include a demand upon LESSEE to cure the breach within less than sixty (60) days, but not less than five (5) business days, after receipt of the notice. Upon failure of LESSEE to cure or remedy the breach or default within the time period provided herein, or within such additional period as LESSOR may allow for good cause, but subject to the provisions of Section 171-21, Hawaii Revised Statutes, and subject also to Sections 1(d) and 1(f) of Article Five above, LESSOR, in addition to all other rights and remedies LESSOR may have under this Lease, shall have the following rights:

(a) The right to declare the term of this Lease (or any extension) ended, to re-enter the Premises and take possession thereof and to terminate all of the rights of LESSEE in and to the Premises.

(b) The right, without declaring the term of this Lease (or any extension) ended, to re-enter the Premises and to occupy the same or any portion thereof and/or to lease the whole or any portion thereof, all for and on account of LESSEE as hereinafter provided.

(c) The right, even though LESSOR may have re-let all or any portion of the Premises, at any time thereafter to elect to terminate this Lease for such previous defaults on the part of LESSEE and to terminate all of the rights of LESSEE in and to the Premises.

Pursuant to said rights of re-entry, LESSOR may, but shall not be obligated to, (i) remove all persons from the Premises using such force as may be necessary therefor, (ii) remove all personal property therefrom, including, but not limited to, LESSEE's property, and (iii) enforce any rights LESSOR may have against said personal property, or store the same in any public or private warehouse or elsewhere at the cost and for the account of LESSEE or the owners or owner thereof. After sixty (60) days, personal property so stored shall be considered abandoned. Anything contained herein to the contrary notwithstanding, LESSOR shall not be deemed to have terminated this Lease or LESSEE's liability hereunder (whether such liability accrues before or after LESSOR exercises its rights hereunder) by any such re-entry or other action to obtain possession of the Premises, except as LESSOR may otherwise expressly provide in writing. LESSEE covenants and agrees that the service by LESSOR of any notice in unlawful detainer and the surrender of possession pursuant to such notice shall not be deemed to be a termination of this Lease or of any liability of LESSEE hereunder, except as LESSOR may otherwise expressly provide in writing.

3. Rights of Holder of Record of a Security Interest. In the event LESSOR seeks to forfeit the privilege, interest, or estate created by this Lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach, if the same can be cured or remedied by the payment of money or, if such is not the case, by performing or undertaking in writing to perform all of the terms, covenants and conditions contained in the Lease on LESSEE's part to be performed, capable of performance by the holder, as determined by LESSOR, within the time period provided in Section 171-20, Hawaii Revised Statutes, or within any additional period allowed under Sections 1(d) and 1(f) of Article Five above, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, LESSOR may: (a) pay to the holder from any monies at its disposal the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, LESSOR shall be entitled to the conveyance of the privilege, interest or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to LESSOR, then terminate the outstanding privilege, interest or estate without prejudice to any other right or remedy for arrearages of rent or for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by LESSOR in instituting or prosecuting its rights or remedies under this provision and Section 171-21 of the Hawaii Revised Statutes shall not operate as a waiver of these rights or to deprive it of the remedy when it may still otherwise hope to resolve the problems created by the breach or default involved. The proceeds of any disposition under subparagraph (b) above shall be applied as follows: first, to reimburse LESSOR for costs and expenses in connection with the disposition; second, to

discharge in full any unpaid purchase price, indebtedness or damages owing LESSOR in connection with the privilege, interest or estate terminated; third, to Mortgagee to the extent of the value received by LESSOR upon redispotion which exceeds the fair market lease value of the land as previously determined by LESSOR's appraiser; and fourth, to the owner of the privilege, interest, or estate.

4. Condemnation. If at any time, during the term of this Lease, all or any portion of the Premises should be condemned, or required for public purposes by the State of Hawaii, or any county or city and county, or any other governmental agency or subdivision, then and in any such event, LESSEE and/or those claiming by, through or under LESSEE will be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon had been condemned by the State of Hawaii under its power of eminent domain, the amount of such just compensation to be determined in the manner set forth in Section 5 of Article Two. Nothing herein contained shall be construed as preventing LESSEE from being entitled to any separate award made to LESSEE for the taking of LESSEE's personal property, or from claiming all or any portion of its award directly against the condemning authority. The foregoing rights of LESSEE shall not be exclusive of any other to which LESSEE may be entitled by law. In the event that LESSEE reasonably determines that the remainder of the Premises are rendered unusable as the result of any such condemnation LESSEE shall have the right to surrender the Premises and terminate this Lease pursuant to Section 17 of Article Four upon the delivery of written notice to LESSOR.

5. Right to Enter. LESSOR and agents or representatives shall have the right to enter and cross any portion of the Premises other than the building for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, LESSOR shall not interfere unreasonably with LESSEE or LESSEE's use and enjoyment of the Premises.

6. Inspection by Prospective Bidders. LESSOR shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the Premises prior to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to LESSEE, and shall, if LESSEE so requires, be made in the company of LESSEE or designated agents of LESSEE; provided, further, that no such authorization shall be given more than two (2) years before the expiration or termination of this Lease.

7. Payment or Acceptance of Rent Not a Waiver. The payment or acceptance of rent shall not be deemed a waiver of any breach by LESSOR or LESSEE of any term, covenant or condition of this Lease, nor of LESSOR's right to re-entry for breach of covenant, nor of the right to declare and enforce a forfeiture for any breach, and the failure of LESSOR or LESSEE to insist upon strict performance of any term, covenant or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of such term, covenant, condition or option.

8. Extension of Time, Force Majeure. Whenever a party is required to perform an act under this Lease, other than the payment of money, by a certain time, said time shall be

deemed extended so as to take into account events of "Force Majeure." "Force Majeure" is any of the following events that prevents, delays, retards or hinders a party's performance of its duties hereunder: act of God; fire; earthquake; volcanic eruption or activity; flood; explosion; war; invasion; insurrection; riot; mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation; strikes; lockouts; condemnation; requisition; acts of governmental, civil, military or naval authorities; or any other cause, whether similar or dissimilar to the foregoing, not within such party's control.

9. Quiet Enjoyment. LESSOR covenants and agrees with LESSEE that upon payment of the rent at the times and in the manner provided and the observance and performance of these terms, covenants and conditions on the part of LESSEE to be observed and performed, LESSEE shall and may have, hold, possess and enjoy the Premises for the term of the Lease, without hindrance or interruption by LESSOR or any other person or persons by, through or under it. LESSOR shall defend the title to the Premises and the use and occupancy of the same by LESSEE against the claims of all persons, except those claiming by or through LESSEE.

10. Interest, Costs and Fees. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency.

In case of any default by LESSEE in the performance of the terms, covenants and conditions herein contained, LESSEE shall pay to LESSOR any and all costs incurred in connection with the default, including reasonable attorneys' fees. In the event that any indebtedness arising hereunder is placed in the hands of a collector or an attorney for collection, or suit is instituted for collection, LESSEE shall pay, in addition to the indebtedness, reasonable collector's and/or attorneys' fees, together with all costs.

11. Hawaii Law/Filing. This Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii. This Lease shall not be recorded although the parties agree to duly execute and file with the Bureau of Conveyances a memorandum of this Lease in substantially the form of **Exhibit "C"** attached hereto.

12. Partial Invalidity. If any term, provision, covenant or condition of this Lease should be held to be invalid, void or unenforceable, the remainder of this Lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

13. Notice. Except as otherwise required by Chapter 171, Hawaii Revised Statutes, any notice, request, offer, approval, consent or other communication required or permitted to be given by or on behalf of either party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other party as follows:

If to LESSEE:

Kalaeloa Solar One, LLC  
2660 Waiwai Loop

Honolulu, Hawaii 96819  
Attention: Darren T. Kimura

If to LESSOR: Department of Hawaiian Home Lands  
91-5420 Kapolei Parkway  
Kapolei, Hawaii 96707  
Attention: Land Management Division

And a copy to: Attorney General's Office  
425 Queen Street  
Honolulu, Hawaii 96813  
AG PSHH

or at such other address as may be specified from time to time in writing by either party. All such notices hereunder shall be deemed to have been given on the date personally delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

14. Definitions. As used herein, unless clearly repugnant to the context:

(a) "Chairman" shall mean the Chairman of the Hawaiian Homes Commission of the Department of Hawaiian Home Lands of the State of Hawaii or his/her successor.

(b) For the purpose of this Lease, the term "Hazardous Materials" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statute, regulation or ordinance, as amended from time to time, including but not limited to the following statutes and regulations promulgated pursuant to them ("Hazardous Materials Laws"):

Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq.  
("RCRA")

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") amended by Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. 9601 et seq.

Clean Air Act, 42 U.S.C. Sections 7401 et seq.

Clean Water Act of 1977, 33 U.S.C. 1251 et seq.

Pesticide Act of 1978, 7 U.S.C. 13 et seq.

Toxic Substances Control Act ("TSCA"), 15 U.S.C. 2601 et seq.

Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.

Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq.

Chapter 128D, Hawaii Revised Statutes

Chapters 342B through 342N, Hawaii Revised Statutes,

and including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-biphenyls ("PCBs"), formaldehyde, and also including any substance

designated by federal, state or local regulation, now or in the future, as presenting a risk to human health or the environment.

(c) "Holder of record of a security interest" is a person who is the owner or possessor of a security interest in the Premises and who has filed with the Department of Hawaiian Home Lands and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) "LESSOR" shall mean and include LESSOR herein, its successors or assigns.

(e) "LESSEE" shall mean and include LESSEE herein, its successors or permitted assigns.

(f) The "Premises" shall mean the land leased hereunder.

(g) The use of any gender shall include all genders, and if there be more than one lessee, then all words used in the singular shall extend to and include the plural.

(h) The paragraph headings throughout this Lease are for the convenience of LESSOR and LESSEE and are not intended to construe the intent or meaning of any of the provisions thereof.

15. Holding Over. If LESSEE shall remain in possession after the expiration or sooner termination of this Lease, all the terms, covenants, and agreements of this Lease, except that the rent payable hereunder shall be twice the annual rent payable for the lease year and prorated on a daily basis, shall continue to apply and bind LESSEE so long as LESSEE shall remain in possession, insofar as the same are applicable. If LESSEE remains in possession with LESSOR's written consent, such tenancy shall be from month-to-month, terminable by either party by not less than twenty-five (25) days' prior written notice.

16. Counterparts. This Lease may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile or "pdf" signatures shall have the same effect as original signatures and each party consents to the admission in evidence of a facsimile or photocopy of this Lease in any court or arbitration proceedings between the parties.

17. Entire Lease. This Lease represents the full and complete agreement between the parties hereto with respect to the subject matter contained herein and therein and supersedes all prior written or oral agreements between said parties with respect to said subject matter.

18. Further Assurances. Upon the receipt of a written request from the other party, each party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary to carry out the terms and intent hereof. Neither party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this section.

19. Estoppels. Either party hereto, without charge, at any time and from time to time, after a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person, firm or corporation specified by such requesting party:

- a. That this Lease is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- b. Whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Lease and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same;
- c. The dates to which amounts due have been paid; and
- d. Such other information as may be reasonably requested by a party hereto.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year first above written.

APPROVED BY THE HHC  
AT ITS MEETING HELD ON

May 18, 2010

APPROVED AS TO FORM:

Deputy Attorney General  
State of Hawaii

State of Hawaii  
DEPARTMENT OF HAWAIIAN HOME LANDS

By

Kaulana H. R. Park, Chairman  
Hawaiian Homes Commission

LESSOR

KALAELOA SOLAR ONE, LLC, a Hawaii limited liability company

By KSP MANAGEMENT LLC, a Hawaii limited liability company  
Its Manager

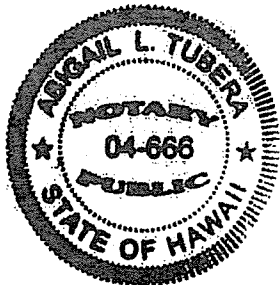
By

Darren T. Kimura  
Its Manager

LESSEE

STATE OF HAWAII )  
 ) SS.  
CITY & COUNTY OF HONOLULU )

On this 10<sup>th</sup> day of September, 2010, before me appeared KAULANA H. R. PARK, to me personally known, who, being by me duly sworn, did say that he is the Chairman of the Hawaiian Homes Commission and the person who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the use and purposes therein set forth.



Abigail L. Tubera  
Notary Public, State of Hawaii

Printed Name: **ABIGAIL L. TUBERA**

My commission expires: 11/21/2012

**NOTARY CERTIFICATION STATEMENT**

Document Identification or Description: GL 293 between  
DUHL + Kalahele Solar One, LLC

Doc. Date: 9/3/10 or ☐ Undated at time of notarization.

No. of Pages: 34

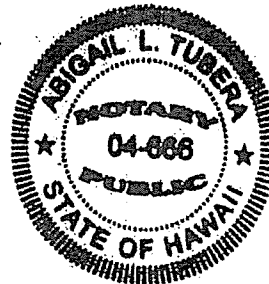
Jurisdiction: 1<sup>st</sup> Circuit  
(in which notarial act is performed)

Abigail L. Tubera  
Signature of Notary

9/10/10  
Date of Notarization and  
Certification Statement

**ABIGAIL L. TUBERA**

Printed Name of Notary



STATE OF HAWAII  
COUNTY OF HONOLULU

)  
) SS.  
)

On this 8TH day of SEPTEMBER, 2010, before me personally appeared DARRIN T. KIMURA, to me personally known, who, being by me duly sworn or affirmed did say that did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Volanda L. Sanchez  
Notary Public, State of Hawai'i  
Printed Name: YOLANDA L. SANCHEZ  
My commission expires: 7/7/2011

NOTARY CERTIFICATION STATEMENT		
Document	Identification	or Description:
<u>GENERAL LEASE NO. 293</u>		
Doc. Date: <u>9/3/2010</u> or <input type="checkbox"/> Undated at time of notarization		
No. of Pages: <u>33</u>		
Jurisdiction: <u>1ST</u> Circuit (in which notarial act is performed)		
<u>Volanda L. Sanchez</u> Signature of Notary	<u>9/8/10</u> Date of Notarization and Certification Statement	
<u>YOLANDA L. SANCHEZ</u> Printed Name of Notary		

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PREMISES**

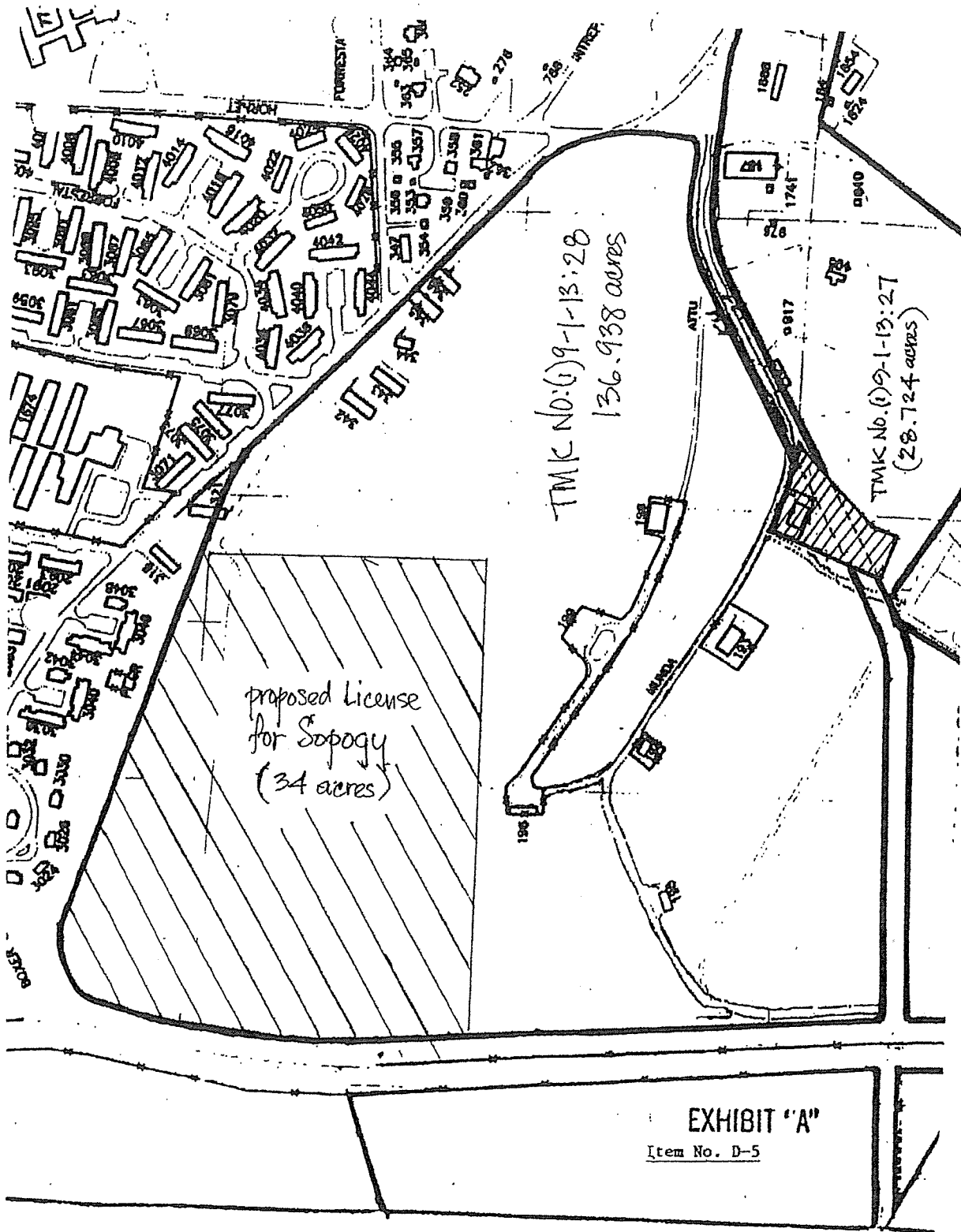
Lessor and Lessee agree and acknowledge that Lessee shall, at its cost and expense, have a metes and bounds survey prepared of the Premises and that the legal description of the Premises as shown on the survey shall thereafter become the legal description of the Premises. At such time, the parties agree to replace this exhibit with the metes and bounds description of the Premises

**EXHIBIT "B"**

**SURVEY MAP**

**See Next Page**

**- remainder of this page intentionally left blank -**



Lessor and Lessee agree and acknowledge that Lessee shall, at its cost and expense, have a metes and bounds survey prepared of the Premises and that the legal description of the Premises as shown on the survey shall thereafter become the legal description of the Premises. At such time, the parties agree to replace this exhibit with the survey map depicting the Premises.

EXHIBIT "C"

MEMORANDUM OF LEASE

LAND COURT  
RETURN BY (X) MAIL ( ) PICK-UP

REGULAR SYSTEM

TMK No.: (1) 9-1-13:28 (por)

This document contains \_\_\_\_ pages

MEMORANDUM OF LEASE

**THIS MEMORANDUM OF LEASE** ("Memorandum") is made and entered into as of September 3, 2010, by and between the State of Hawaii, by its **DEPARTMENT OF HAWAIIAN HOME LANDS**, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called "**LESSOR**," and **KALAELOA SOLAR ONE, LLC**, a Hawaii limited liability company, whose business and mailing address is 2660 Waiwai Loop, Honolulu, Hawaii 96819, hereinafter called "**LESSEE**."

1. **TERM AND PREMISES.** For a lease term commencing on September 3, 2010, and ending as of midnight on September 2, 2032, upon the provisions set forth in that certain written lease of even date herewith from LESSOR to LESSEE ("Lease"), all of which provisions are specifically made a part hereof as though fully and completely set forth herein, LESSOR leases to LESSEE, and LESSEE leases from LESSOR, that certain real property ("Premises") located at Kalaeloa, Island of Oahu, Hawaii, comprising approximately 34.0 acres, more or less, of Hawaiian Home Lands, more particularly described in Exhibit "A", together with all rights of ingress and egress and all other rights appurtenant to said Premises including, without limitation, the right to use the building to be constructed on the Premises for



the purposes contemplated in the Lease, all of which rights are more particularly described in the Lease.

2. **USE.** LESSEE is granted the right to use the Premises for the development, installation, operation, management, maintenance, repair and removal of a solar power production facility, including the construction of solar thermal panels (collectors), a thermal storage system and a "power block" that generates alternating electrical current to be fed into the Hawaiian Electric Company, Inc. electricity grid, as well as other facilities to be used in conjunction therewith.

3. **PURPOSE OF MEMORANDUM OF LEASE.** This Memorandum is prepared for the purpose of providing for record notice of the Lease, and in no way modifies the express and particular provisions of the Lease.

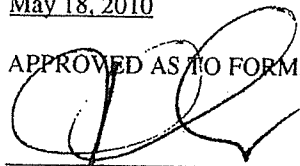
4. **FOR THE BENEFIT OF THE PREMISES.** LESSOR and LESSEE intend that the covenants, conditions and restrictions described and referred to herein shall be both personal to LESSOR and LESSEE and binding on their successors and assigns. Each successive owner of the Premises or of any portion thereof, and each person having any interest therein derived through any owner thereof, shall be bound by such covenants, conditions and restrictions for the benefit of the Premises.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

APPROVED BY THE HHC  
AT ITS MEETING HELD ON

May 18, 2010

APPROVED AS TO FORM:



Deputy Attorney General  
State of Hawaii

State of Hawaii  
DEPARTMENT OF HAWAIIAN HOME LANDS

By



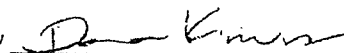
Kaulana H. R. Park, Chairman  
Hawaiian Homes Commission

LESSOR

KALAELOA SOLAR ONE, LLC, a Hawaii limited liability company

By KSP MANAGEMENT LLC, a Hawaii limited liability company  
Its Manager

By



Darren T. Kimura  
Its Manager

LESSEE

**EXHIBIT "A"**

**Intentionally Left Blank**

**To Be Replaced by a Survey Map**

STATE OF HAWAII

COUNTY OF HONOLULU

)  
) SS.  
)

On this 8TH day of SEPTEMBER, 2010, before me personally appeared DAVID T. KIMURA, to me personally known, who, being by me duly sworn or affirmed did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

YOLANDA L. SANCHEZ  
Notary Public, State of Hawai'i  
Printed Name: YOLANDA L. SANCHEZ  
My commission expires: 7/7/2011

**NOTARY CERTIFICATION STATEMENT**

Document Identification or Description:

MEMORANDUM OF LEASE 293

Doc. Date: 9/8/10 or ☐ Undated at time of  
notarization

No. of Pages: 4

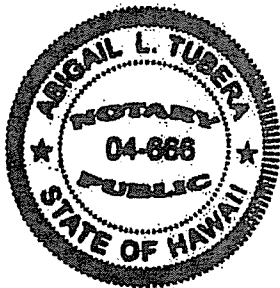
Jurisdiction: 1ST Circuit  
(in which notarial act is performed)

YOLANDA L. SANCHEZ 9/8/10  
Signature of Notary Date of Notarization and  
Certification Statement

YOLANDA L. SANCHEZ  
Printed Name of Notary

STATE OF HAWAII )  
 ) SS.  
CITY & COUNTY OF HONOLULU )

On this 10<sup>th</sup> day of September, 2010, before me appeared KAULANA H. R. PARK, to me personally known, who, being by me duly sworn, did say that he is the Chairman of the Hawaiian Homes Commission and the person who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the use and purposes therein set forth.



Abigail L. Tubera  
Notary Public, State of Hawaii  
Printed Name: ABIGAIL L. TUBERA  
My commission expires: 11/21/2012

**NOTARY CERTIFICATION STATEMENT**

Document Identification or Description: Memorandum of lease  
between DHHC & Kalaheo Solar One, LLC

Doc. Date: 9/3/10 or ☐ Undated at time of notarization.

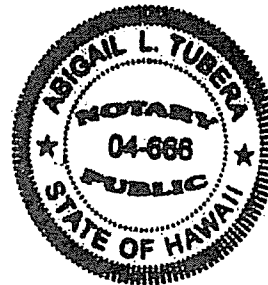
No. of Pages: 5

Jurisdiction: 1<sup>st</sup> Circuit  
(in which notarial act is performed)

Abigail L. Tubera  
Signature of Notary

9/10/10  
Date of Notarization and  
Certification Statement

ABIGAIL L. TUBERA  
Printed Name of Notary



**HAWAIIAN HOMES COMMISSION**  
**Minutes of June 23, 2009**  
**Meeting Held in Kailua-Kona, Hawai'i**

Pursuant to proper call, the 588th Regular Meeting of the Hawaiian Homes Commission was held in the King Kamehameha's Kona Beach Hotel Ekahi Room, 75-5660 Palani Road, Kailua-Kona, Hawai'i, beginning at 9:00 a.m.

**PRESENT** Mr. Micah A. Kane, Chairman  
Mr. Perry O. Artates, Commissioner, Maui  
Mr. Donald S.M. Chang, Commissioner, O'ahu  
Ms. Malia Kamaka, Commissioner, West Hawai'i  
Ms. Trish Morikawa, Commissioner, O'ahu  
Mr. Henry Tancayo, Commissioner, Moloka'i

**EXCUSED** Mr. Stuart Hanchett, Commissioner, Kaua'i  
Mr. Francis K. Lum, Commissioner, O'ahu  
Mr. Alapaki Nahale-a, Commissioner, East Hawai'i

**COUNSEL** Clayton Lee Crowell, Deputy Attorney General

**STAFF** Kaulana Park, Deputy to the Chairman  
Bob Hall, Executive Assistant and HSD Acting Administrator  
Kay Ahina, Assistant to the Chairman  
Linda Chinn, Administrator, Land Management Division  
Larry Sumida, Administrator, Land Development Division  
Darrell Yagodich, Administrator, Planning Office  
Lloyd Yonenaka, Information & Community Relations Officer  
Scottina Ruis, NAHASDA Planner  
Elaine Searle Secretary to the Commission

**PULE** Sam Moku, HOAP Manager

**AGENDA** Commissioner Henry Tancayo moved, seconded by Commissioner Perry Artates, to approve the agenda. Motion carried unanimously.

**MINUTES** None were approved

ITEM NO: D-4

SUBJECT: Issuance of License Easement, County of Hawai'i, Ane Keohokalole Highway, Kealahou, Hawai'i

CORRECTION: The license easement should be issued to the County of Hawai'i instead of the Department of Finance. License should be issued to the Department of Public Works.

MOTION

Moved by Commissioner T. Morikawa, seconded by Commissioner M. Kamaka..

DISCUSSION

Hawai'i County representative, Gerald Takase, is hoping to break ground by the end of 2009 with a completion date scheduled for 2012. DHHL has been assisting the County in meeting its aggressive deadline.

ACTION

Motion carried unanimously.

ITEM NO: D-5

SUBJECT: Issuance of License Agreement, Sopogy, Inc., Kalaeloa, O'ahu

MOTION

Moved by Commissioner M. Kamaka, seconded by Commissioner P. Artates.

DISCUSSION

Van Matsushige, Project Developer for Sopogy, Inc., explained why the solar thermal storage system being built in Kalaeloa is limited to a 4 megawatt project. A 5 megawatt project would have required a bidding process with Hawaiian Electric. The time frame is to have this system operational in 2010. Sopogy's goal is to develop alternative electric projects throughout Maui, Kauai and the Big Island and to work in conjunction with the Hawai'i clean energy initiative. Students at Konawaena High School participated in this hands-on outreach project, learning the technological environmental benefits of solar thermal system.

ACTION

Motion carried unanimously.

## **HAWAIIAN HOMES COMMISSION**

**Minutes of May 18, 2010  
Meeting Held in Hilo, Hawaii**

Pursuant to proper call, the 601st Regular Meeting of the Hawaiian Homes Commission was held at the Department of Hawaiian Home Lands East Hawaii District Office, 160 Baker Avenue, Hilo, Hawai'i, beginning at 9:05 a.m.

**PRESENT** Mr. Kaulana H.R. Park, Chairman  
Mr. Perry O. Artates, Commissioner, Maui  
Mr. Donald S.M. Chang, Commissioner, O'ahu  
Mr. Stuart Hanchett, Commissioner, Kaua'i  
Ms. Malia Kamaka, Commissioner, West Hawai'i  
Mr. Francis K. Lum, Commissioner, O'ahu  
Ms. Trish Morikawa, Commissioner, O'ahu  
Mr. Henry Tancayo, Commissioner, Moloka'i

**EXCUSED** Mr. Alapaki Nahale-a, Commissioner, East Hawai'i

**COUNSEL** Bryan C. Yee, Deputy Attorney General

**STAFF** Anita S. Wong, Deputy to the Chairman  
Bob Hall, Executive Assistant  
Francis Apoliona, Compliance Officer  
Linda Chinn, Administrator, Land Management Division  
Kay Ahina, Assistant to the Chairman  
Bill Davis, East Hawai'i Acting District Supervisor  
Sam Moku, HOAP Manager  
Elaine Searle Secretary to the Commission

**PULE** Sam Moku, HOAP Manager

### **AMENDED**

**AGENDA** Commissioner Trish Morikawa moved, seconded by Commissioner Malia Kamaka, to append Items J-3 and J-4 to today's agenda. Motion carried unanimously.

**MINUTES** Commissioner Malia Kamaka moved, seconded by Commissioner Francis Lum, to approve the minutes of April 20, 2010 as circulated. Motion carried unanimously.

**ITEM NO: D-1**

**SUBJECT: Issuance of Right-of-Entry, Schnitzer Steel Hawai'i, Corp.,  
Kalama'ula, Moloka'i**

**MOTION**

Moved by Commissioner H. Tancayo, seconded by Commissioner F. Lum.

**AMENDED MOTION**

Land Management Administrator Linda Chinn included in condition No. 4. "SSH to donate approximately \$20 per net ton to an organization or fund benefiting Permittee's beneficiaries *on Moloka'i* and selected by the Permittee.

Moved by Commissioner H. Tancayo, seconded by Commissioner D. Chang.

**DISCUSSION**

According to Ms. Chinn, Schnitzer Steel Hawai'i (SSH) will need to receive permission to enter a lessee's property for removal of debris to secure discarded appliances and automobiles, etc.  
• Lessees will be notified that this service will be provided to them.

**ACTION**

Motion carried unanimously.

**ITEM NO: D-2**

**SUBJECT: Issuance of General Lease, Kalaeloa Solar One, LLC, Kalaeloa, O'ahu**

**MOTION/ACTION**

Moved by Commissioner T. Morikawa, seconded by Commissioner S. Hanchett.

**DISCUSSION**

Darrin Kimura, Sopogy, Inc., addressed the Commission thanking them for consenting to a name change of the Kalaeloa project from Sopogy, Inc. to Kalaeloa Solar One. In addition, to authorize the license change from a general license to a general lease. He welcomed the Commission to visit the Kailua-Kona site in August where a desalinization unit takes seawater and removes the salt to create drinking water. This technology will create electrical power as well as drinking water by utilizing the sun as its resource. The system uses a curved mirror which tracks the sun and bounces off the mirror into a pipe where water is used to create steam. It is a cleaner, cost effective process using thermal energy, noted Mr. Kimura. The project could



(cont. Item D-2)

generate approximately two (2) megawatts of electricity to power two hotels. The facility in Kailua-Kona is a small project which can eventually spread throughout the islands in providing drinking water for all counties. In Australia this technology is being utilized where water is being desalinized for drinking water, to reduce costs.

ACTION

Motion carried unanimously.

ITEM NO: D-3

SUBJECT: Annual Renewal of Revocable Permits, Statewide

MOTION/ACTION

Moved by Commissioner H. Tancayo, seconded by Commissioner M. Kamaka. Motion carried unanimously.

ITEM NO: D-4

SUBJECT: Ratification of the Chairman's Consents and Approvals

CORRECTION:

LMD Administrator, Linda Chinn, noted that in License Agreement No. 372, the project is located in Wailua, Kaua'i, not Lihue, Kaua'i.

MOTION/ACTION

Moved by Commissioner H. Tancayo, seconded by Commissioner M. Kamaka. Motion carried unanimously.

ITEM NO: D-5

SUBJECT: Notices of Default / Revocation, Statewide

MOTION/ACTION


Moved by Commissioner F. Lum, seconded by Commissioner T. Morikawa. Motion carried unanimously.

STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

November 20, 2007

To: Chairman and Members, Hawaiian Homes Commission

From: Linda Chinn, Administrator  
Land Management Division 

Subject: Amendment to License Agreement No. 597, Nanakuli  
Hawaiian Homestead Community Association, Nanakuli,  
Oahu

RECOMMENDED MOTION/ACTION

That the Hawaiian Homes Commission (HHC) grant its approval to the following:

- A) Cancellation of License Agreement No. 597, issued to Nanakuli Hawaiian Homestead Community Association, for a term of thirty (30) years for the purpose of providing economic opportunities, community services, educational and cultural enhancement and social synergy for the health and welfare of the Nanakuli community; and
- B) Issuance of a sixty five (65) year general lease (GL) to the Nanakuli Hawaiian Homestead Community Association for the premises located on an 11.96-acre parcel of Hawaiian home lands at Nanakuli, Oahu, Tax Map Key No. (1) 8-9-02:001 (Por) (See Exhibit "A" & "B"), to provide economic opportunities, community services, educational and cultural enhancement and social synergy for the health and welfare of the overall Nanakuli community, of which our beneficiaries represent a large majority, subject to the following conditions:
  - 1. The term of the general lease shall be for sixty-five (65) years;
  - 2. The effective date of the lease shall be January 1, 2008;

3. The annual rental for the lease shall be 20% of net revenues per annum with no base rent until the first reopening date;
4. That on January 1, 2033, January 1, 2043, January 1, 2053, and January 1, 2063, the lease rent shall be reopened and the rental for each period shall be redetermined by independent appraiser;
5. Notwithstanding anything to the contrary contained in the lease agreement or hereafter amended by Chapter 171, HRS, the lease rental for any rental reopening period shall not be less than the rental for the preceding period;
6. The withdrawal of all or a portion of the lands demised under the lease, upon two-years written notice, should the lands be required for the purpose as stated in the Hawaiian Homes Commission Act of 1920;
7. NHHCA shall be permitted to subdivide the land parcel to separate the commercial shopping center from the Hawaiian cultural center and the affordable rental housing;
8. The Department of the Attorney General shall review and approve the terms of the general lease document; and
9. The Chairman of the Hawaiian Homes Commission may set forth any additional terms and conditions which shall ensure and promote the purposes of the demised premises.

#### DISCUSSION

The Hawaiian Homes Commission approved the issuance of a license agreement to the Nanakuli Hawaiian Homestead Community Association (NHHCA) to use a portion of Hawaiian home lands in Nanakuli for a multi-phase, multi-use community center and commercial project. License Agreement No. 597 (LA 597) was issued February 27, 2004 with an effective date of December 1, 2004. The license was for a term of 30 years and the proposed development plans include a commercial center, kupuna housing and community center with the intent to provide economic opportunities, community services, educational and cultural enhancement and social synergy for the health and welfare of the overall Nanakuli community, of which our beneficiaries represent a large majority.

At its meeting of April 25, 2006, the Hawaiian Homes Commission accepted the Final Environmental Assessment and Findings of No Significant Impact of this proposed project.

"The Nanakuli Village Center" (See Exhibit "C") has been conceptually completed and will consist of the Nanakuli Commercial Center, the Agnes K. Cope Hawaiian Cultural Center, the International Surfing Hall of Fame, and Hale Makana O Nanakuli Rental Housing, which is an affordable rental housing development.

Mr. Kali Watson, project manager, has requested that their current LA 597 be cancelled and converted into a long term general lease. The request is primarily due to their need to finance the commercial portion of the development through a conventional mortgage process and the ability to sublease the commercial spaces to individual tenants. Through a letter dated October 31, 2007 (See Exhibit "D"), Mr. Brian N. Sunada, Senior Vice President at First Hawaiian Bank, indicated that it would be difficult to approve a construction mortgage for the project since a license interest may not constitute a real property interest and obtaining title insurance over a license agreement would be difficult, if not impossible. Hence, to make this project "financeable", First Hawaiian Bank would require NHHCA to obtain a long term lease from the department.

Piilani Group, LLC, a locally owned Native Hawaiian real estate development company with a proven track record will be the developer of the commercial center. The approximately 47,000 square feet, one story commercial shopping center will include restaurants, a grocery store, coffee shop, and various store types.

It is anticipated that the development of the Agnes K. Cope Hawaiian Cultural Center and the International Surfing Hall of Fame shall be funded from the revenue generated from the commercial project.

Funding commitments for the affordable rental housing have been given from the Rental Housing Trust Fund (\$3,000,000.00), the Office of Hawaiian Affairs (\$1,200,000.00), State of Hawaii Housing and Finance Development Corporation (HHFDC) (\$1,600,000.00), and the Weinberg Foundation (\$2,675,610.00). Affordable rental tenant preference shall be given to people who can prove Native Hawaiian blood quantum of any amount. The same preference policy is used by the Kamehameha Schools/Bishop Estate Admissions office as well as General Lease No. 269,

Waimanalo Kupuna housing, in Waimanalo, Oahu. This component of the general lease will help to alleviate the homeless problem on the Leeward Coast of Oahu.

In order to make this project feasible, it is recommended that for the initial twenty-five years of the lease term, the net operating income derived from the commercial center shall be committed by NHHCA to fund and support the building and development of the Agnes K. Cope Hawaiian Cultural Center and the International Surfing Hall of Fame. Any excess of net operating income shall be subject to the agreed upon rent structure at 20% due and payable to the department. Thereafter, the rental shall be reopened and redetermined by a fair market appraisal for every ensuing ten-year period beginning January 1, 2033, January 1, 2043, January 1, 2053 and January 1, 2063. Consideration may be given to defer the reopening of the rental period and keep the rental structure at 20% of net revenue for additional period should NHHCA justify such need.

Upon approval of the HHC, the timeline for the development of the parcel is as follows:

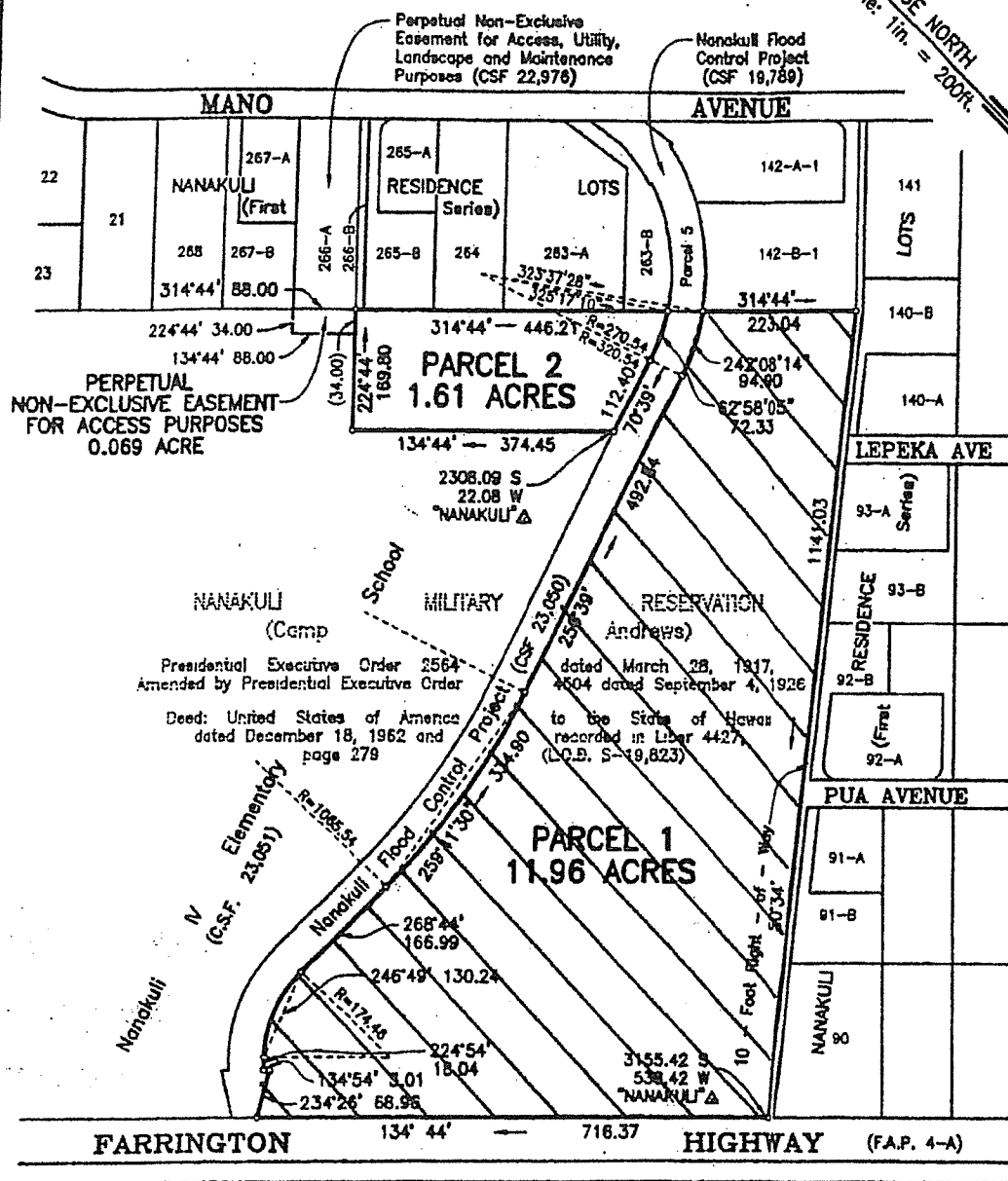
- |                               |   |
|-------------------------------|---|
| ❑ Commercial Shopping Center: | Construction start late 2008<br>Completion first half of 2009 |
| ❑ Hawaiian Cultural Center:   | Construction start late 2009<br>Completion first half of 2010 |
| ❑ Affordable Rental Housing:  | Construction start late 2008<br>Completion first half of 2009 |

#### AUTHORIZATION

§171-43.1 of the Hawaii Revised Statutes, as amended, titled Lease to eleemosynary organizations, authorizes the commission to lease, at nominal consideration or any rental amount the commission deem appropriate; by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended; and on such other terms and conditions as the commission may determine. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service.

RECOMMENDATION

Land Management Division requests approval of the motion as stated.



PORTIONS OF THE  
FORMER NANAKULI MILITARY RESERVATION  
(CAMP ANDREWS)

PARCELS 1 AND 2

Nanakuli, Waianae, Oahu, Hawaii

JOB S-19(95)

C. BK.

Scale: 1 inch = 200 feet

TAX MAP 8-9-02:Por. 1

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

C.S.F. NO. 23,049

STATE OF HAWAII

E.T. Nov. 28, 2000

EXHIBIT "A"

ITEM NO. D-5



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU

C.S.P. No. 23,049

November 28, 2000

PORTIONS OF THE  
FORMER NANAKULI MILITARY RESERVATION  
(CAMP ANDREWS)

PARCELS 1 ~~AND 2~~

Nanakuli, Waianae, Oahu, Hawaii

Being portions of the Government (Crown) Land of Nanakuli set aside as Nanakuli Military Reservation (Camp Andrews) by Presidential Executive Order 2564 dated March 28, 1917, amended by Presidential Executive Order 4504 dated September 4, 1926 and subsequently conveyed to the State of Hawaii by the United States of America by deed dated December 18, 1962 and recorded in Liber 4427, Page 279 (LOD S-19823).

PARCEL 1

Beginning at the south corner of this parcel of land and on the northwest corner of the intersection of Farrington Highway, Federal Aid Project No. 4-A and a 10-foot Right-of-Way of Nanakuli Residence Lots, First Series, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NANAKULI" being 3155.42 feet South and 538.42 feet West, thence running by azimuths measured clockwise from True South:-

1. 134° 44'

716.37 feet along the northeast side of Farrington Highway, Federal Aid Project No. 4-A;

2. 234° 26'

68.96 feet along Nanakuli Flood Control Project;

3. 134° 54'

3.01 feet along Nanakuli Flood Control Project;

4. 224° 54'

18.04 feet along Nanakuli Flood Control Project;

PRELIM. APPR'D.  
Department of the  
Attorney General

EXHIBIT "B"  
(page 1 of 4)

ITEM NO. D-5



5. Thence along Nanakuli Flood Control Project on a curve to the right with a radius of 174.46 feet, the chord azimuth and distance being:  
246° 49' 130.24 feet;
6. 268° 44' 166.99 feet along Nanakuli Flood Control Project;
7. Thence along Nanakuli Flood Control Project on a curve to the left with a radius of 1065.54 feet, the chord azimuth and distance being:  
259° 41' 30" 334.90 feet;
8. 250° 39' 492.84 feet along Nanakuli Flood Control Project;
9. Thence along Nanakuli Flood Control Project on a curve to the left with a radius of 320.54 feet, the chord azimuth and distance being:  
242° 08' 14" 94.90 feet;
10. 314° 44' 223.04 feet along Lot 142-B-1 of Nanakuli Residence Lots, First Series;
11. 50° 34' 1141.03 feet along the northwest side of a 10-foot Right-of-Way of Nanakuli Residence Lots, First Series to the point of beginning and containing an AREA OF 11.96 ACRES.

~~PARCEL 2~~

**NOTE:** Parcel 2 is not a part of License Agreement No. 597.

~~Beginning at the southwest corner of this parcel of land, at the~~  
southeast corner of Nanakuli IV Elementary School and on the north side of Nanakuli Flood Control Project, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NANAKULI" being 2308.09 feet South and 22.08 feet West, thence running by azimuths measured clockwise from True South:-

1. 134° 44' 374.45 feet along Nanakuli IV Elementary School;
- ~~2. 224° 44' 169.80 feet along Nanakuli IV Elementary School;~~

PRELIM APPR'D.  
Department of the  
Attorney General

**EXHIBIT "B"**  
(page 2 of 4)

ITEM NO. D-5

November 28, 2000

3. 314° 44' 446.21 feet along Lots 266-B, 265-B, 264, 263-A and 263-B of Nanakuli Residence Lots, First Series;

4. Thence along Nanakuli Flood Control Project on a curve to the right with a radius of 270.54 feet, the chord azimuth and distance being:  
62° 58' 05" 72.33 feet;

5. 70° 39' 112.40 feet along Nanakuli Flood Control Project to the point of beginning and containing an AREA OF 1.61 ACRES.

**NOTE:** Easement described below is not a part of License Agreement No. 597.

Together with a Perpetual Non-Exclusive Easement for Access Purposes over and across Nanakuli IV Elementary School as shown on plan attached hereto and made a part hereof and more particularly described as follows:

Beginning at the east corner of this easement being also the end of Course 2 of the above-described Parcel 2 of the Former Nanakuli Military Reservation (Camp Andrews), thence running by azimuths measured clockwise from True South:-

1. 44° 44' 34.00 feet along Parcel 2 of the Former Nanakuli Military Reservation (Camp Andrews);
2. 134° 44' 88.00 feet;
3. 224° 44' 34.00 feet;

PRELIM. APPR'D.  
Department of the  
Attorney General

**EXHIBIT "B"**  
(page 3 of 4)

ITEM NO. D-5

~~4. 314° 44' 88.00 feet along Lot 266 A of Nanakuli Residence~~  
~~Lots, First Series to the point of beginning~~  
~~and containing an AREA OF 0.069~~  
~~ACRE.~~

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By: 

Stanley T. Hasegawa

Licensed Land Surveyor No. 3632 gm

Reviewed and Approved by:



Randall M. Hashimoto

State Land Surveyor

Compiled from CSFs 14297,  
19789, File Plan 1783, H.H.  
Oahu File Folder A-1, Plat  
19.1(B)H.H. and other Govt.  
Survey Records.  
TMK: 8-9-02:por. 1

PRELIM. APP'D.  
Department of the  
Attorney General

EXHIBIT "B"

(page 4 of 4)

ITEM NO. D-5



## Agnes K. Cope Hawaiian Cultural Center

This multi-service facility, designed by Pacific Atelier International, combines traditional Hawaiian architecture styles and modern concepts. The 47,000 square foot, two-story building will consist of a large assembly hall, flexible meeting spaces, a pre-school to accommodate at least 50 children, classrooms for educational and vocational training programs, a canteen kitchen and several office spaces.

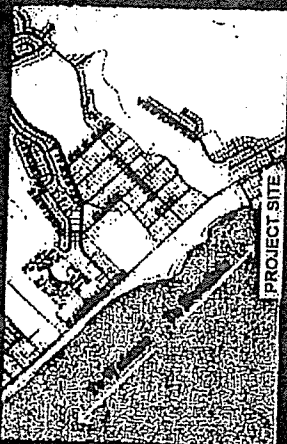
## International Surfing Hall of Fame

Created and developed by well-known surfers Billie Keaulana and George Downing, the International Surfing Hall of Fame recognizes Hawaii as the birthplace of surfing. It will also showcase and honor the great local and international surfers of all time.



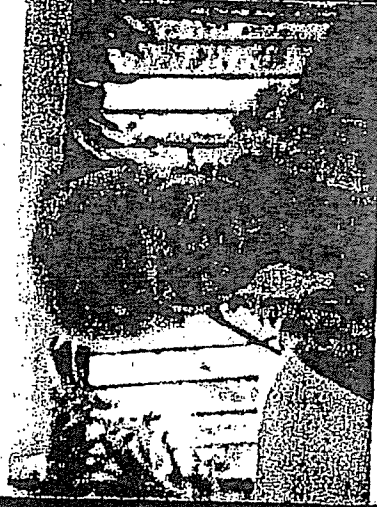
*Pupuhakahi i holomua*

*Being united in order to progress*



PROJECT SITE

## THE NANAKULI VILLAGE CENTER



Lead toward the future.

Auntie Aggie K. Cope

As a long time Nanakuli Homesteader, she is considered a "Living Treasure of Hawaii" and was one of the originators of the Hawaiian Cultural Renaissance.



## Hale Makana O Nanakuli

In response to Oahu's growing homeless crisis, this 48-unit affordable rental housing project targets the very-low income families (30% and below AMI). Open to all in need, special attention will be given to single parents and kupuna raising their grandchildren. Your support will benefit from being close to the new Nanakapona Elementary School and the soon to be built Boys & Girls Club of Hawaii.

## Nanakuli Commercial Center

This business portion of the Village Center will provide 46,930 square feet for multiple retail stores and restaurants. Local entrepreneurs will now be given an opportunity to setup shop at the gateway to the leeward coast, bringing needed jobs and economic growth to the area.



# THE NANAKULI VILLAGE CENTER



## *Nanaku*

THE VISION

The seed for a gathering place for the people of the Waianae Coast, planted over three decades ago, has grown into a mighty vision. This vision for a centrally located multi-purpose Village Center, catering to the various cultural, social and economic needs in the community soon followed.

In February 2004, the Department of Hawaiian Home Lands approved a 30-year license on an 11.96 acre parcel of land in Nanakuli marking the first major milestone. Over the past few years, funds were raised and work has begun in preparing the site.

The most important milestone is the individuals and organizations that represent a diverse cross section of the community which have joined our efforts. They have come forward with innovative ideas for encompassing a wide range of community-based cultural, economic and educational activities all of which will make the Village Center live, breathe and sing. These reinforce our original thoughts that the Village Center must and will have a positive impact on every section of every age and every ethnic background along the Leeward Coast.



EXHIBIT "C"

ITEM NO. D-5

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STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. **281**

between

STATE OF HAWAII

and

NANAKULI HAWAIIAN HOMESTEAD COMMUNITY ASSOCIATION (NHHCA)

covering

HAWAIIAN HOME LANDS

situate at

Tax Map Key (1) 8-9-002:001  
Former Camp Andrews Site  
Nanakuli, Island of Oahu

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STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. 281

THIS INDENTURE OF LEASE (the "Lease"), is made as of the 3<sup>rd</sup> day of October, 2008, but shall be effective on the date set forth below, by and between the STATE OF HAWAII, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and whose post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called "LESSOR," and NANAKULI HAWAIIAN HOMESTEAD COMMUNITY ASSOCIATION (NHHCA), a Hawaii Non-Profit 501c3 Corporation, whose business and mailing address is 89-188 Farrington Highway, Waianae, Hawaii 96792, hereinafter called "LESSEE."

W I T N E S S E T H:

**ARTICLE ONE**  
**DEMISE**

1. Lease. LESSOR, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of LESSEE to be kept, observed and performed, does lease to LESSEE, and LESSEE does lease from LESSOR, those certain premises located at the Former Camp Andrews Site, Nanakuli, Island of Oahu, City and County of Honolulu, and further identified as Parcel 1, comprising 11.96 acres, more or less, of Hawaiian home lands, more particularly shown on the map marked **Exhibit "A"**, and as described in **Exhibit "B"**, both attached hereto and made a part hereof ("Premises").

2. Term. The Premises are demised unto LESSEE TO HAVE AND TO HOLD, together with all buildings, improvements, tenements, rights, easements, privileges appurtenant thereto, but subject to the terms and conditions of this Lease, for a term commencing on January 1<sup>st</sup>, 2008 (which shall be the Effective Date of the Lease), and ending as of midnight on December 31<sup>st</sup>, 2073 unless sooner terminated as hereinafter provided.

3. Progress Evaluation. During the term of the General Lease, LESSEE shall make significant progress toward completion of LESSEE'S multi-phase, multi-use cultural center, commercial project, and affordable rentals. Progress shall be measured against milestones set at five (5)-year intervals over the first fifteen (15) years of the General Lease. LESSEE shall complete at least one (1) major project component within each three (3) five (5)-year periods. Failure to meet any milestone or an otherwise negative evaluation of LESSEE'S project may be grounds for early termination of the General Lease. The milestones that must be met in reference to the commencement date of this General Lease are as follows:

A) Years one (1) through five (5):

- 1) Complete HRS Chapter 343 compliance
- 2) Grub, clear and maintain entire Premises.
- 3) Highway ingress/egress completed with State Department of Transportation approval.
- 4) Backbone infrastructure-access roads, water meter, water lines, waste water system, drainage completed for Phase I component.
- 5) Complete site work for Phase I construction (commercial project or other development component of equal or greater magnitude).
- 6) Commence and complete perimeter site improvements (signage, landscaping along Farrington Highway frontage and security/construction fencing).

B) Years six (6) through ten (10):

- 1) Phase I construction completed and operating (commercial project or other capital improvements of equal or greater magnitude).
- 2) Commence and complete Phase II construction (Affordable rentals or other development component of equal or greater magnitude).
- 3) Complete landscaping and parking for Phase I & II components.

C) Years eleven (11) through fifteen (15):

- 1) Commence and complete Phase III construction (cultural center or other development component of equal or greater magnitude).
- 2) Complete landscaping and parking for Phase III component.
- 3) Entire project completed as planned.

**ARTICLE TWO**  
**RESERVATIONS AND RIGHT OF WITHDRAWAL**

RESERVING UNTO LESSOR THE FOLLOWING:

1. Minerals and Waters.

(a) All minerals as hereinafter defined, in, on, or under the Premises, except that the right to prospect for, mine and remove such minerals shall be suspended during the term of this Lease. "Minerals," as used herein, shall mean any and all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under any land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in construction in furtherance of LESSEE's permitted activities on the demised Premises and not for sale to others. This provision is intended only to govern extraction of minerals and not to impair in any manner

LESSOR's ownership of the mineral rights pursuant to Sections 171-58 and 182-2 of the Hawaii Revised Statutes.

(b) All surface waters, ground waters, and water systems, appurtenant to the Premises, provided that such reservation shall not include the right to enter the Premises to capture, divert, or impound the same or to occupy and use any of the Premises in the exercise of this reserved right.

2. Prehistoric and Historic Remains. LESSOR has reviewed its files and records and determined that it has no information, reports or inspections reflecting that there are any prehistoric or historic remains or sites of archaeological significance present at the Premises. If, however, any area is rendered unsuitable for development as a result of the discovery of sites of archaeological significance or prehistoric or historic remains, such sites or remains shall be excluded from the Premises demised to LESSEE with an equitable adjustment of the rental payable hereunder determined in the manner provided in Section 5 of this Article Two.

3. Right of Withdrawal. The right to withdraw all or any portion of the Premises for the purposes of the Hawaiian Homes Commission Act, 1920 (the "Act"), as reserved by Section 204(a)(2) of the Act. The right to withdraw reserved under this Section 3 of Article Two shall be exercised only after not less than two (2) years prior written notice to LESSEE. As a condition to the exercise by LESSOR of any rights reserved in this Section 3 of Article Two, just compensation shall be paid to LESSEE for any of the Premises and/or LESSEE's improvements so withdrawn or rendered unsuitable for LESSEE's intended use, which amount is to be determined in the manner set forth in Section 5 of this Article Two, and the annual base rental under this Lease shall also be proportionately reduced also as provided in Section 5 of this Article Two.

4. Reservation of Easements in Favor of LESSOR. LESSOR hereby reserves the right and option, with the reasonable consent of LESSEE, to create, designate, grant and relocate from time to time, at its sole cost and expense, any and all necessary easements for underground utilities and services, including drainage, water, sewer, electricity and other utilities under, across and through the Premises, provided that (a) such easements do not cross through or under any permanent structures constructed on the Premises or planned to be constructed on the Premises, and (b) the work to construct and install any such easements shall be done, and the easement shall be utilized, in such a fashion as to cause no disruption with LESSEE's operations or use of the Premises. Upon completion of any such work by LESSOR the surface of the Premises shall be returned, at LESSOR's sole cost and expense, to substantially the same condition as it was prior to installation of any underground utility.

5. Compensation for Takings, Withdrawal and other Entry or Actions Reserved in Favor of LESSOR. In the event all or any portion of the Premises is taken or withdrawn, or LESSEE is denied the practical and economic use thereof by any other entry or actions or matters reserved to LESSOR under this Lease, then and in any such event, LESSEE and/or those claiming by, through or under LESSEE shall be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain. If at

any time during the term, a portion, but not all, of the Premises should be taken or withdrawn, or LESSEE is denied the practical and economic use of such portion, then and in any such event, the annual base rental shall be proportionately reduced based upon the ratio between the fair market value of the Premises prior to such taking, withdrawal, or use denied to the fair market value of the Premises remaining after such taking, withdrawal, or use denial. In such event, LESSEE shall also be entitled to receive from LESSOR a portion of the value of LESSEE's permanent improvements situated on the taken, withdrawn, or use denied portion of the Premises in the proportion that the unexpired term of the Lease bears to the entire term of the Lease, provided, that LESSEE may, in the alternative, remove and relocate its improvements to the remainder of the Premises occupied by LESSEE. Where the portion taken, withdrawn, or use denied renders the remainder of the Premises unusable in LESSEE's reasonable determination, LESSEE shall have the option to surrender this Lease in accordance with Section 17 of Article Four below or partially surrender this Lease as to the portion of the Premises so affected, and be discharged and relieved from any further liability therefor. In the event LESSEE shall not exercise such option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected, then the annual base rental for the balance of the term shall be abated and adjusted in an equitable manner as set forth above. In the event that LESSEE reasonably exercises its option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected by reason of a partial taking, withdrawal or use denial, LESSEE shall be entitled to just compensation as if LESSOR had elected to take, withdraw or deny the use of the entire Premises or the portion of the Premises so affected under the Lease and LESSEE shall be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises or the portion of the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain as more particularly set forth above.

### **ARTICLE THREE**

#### **RENTAL**

LESSEE shall pay to LESSOR at the office of the Department of Hawaiian Home Lands, Honolulu, Oahu, State of Hawaii, a net annual rental as provided hereinbelow, payable in advance, without notice or demand and without any set-off or deduction, in equal monthly installments, as follows:

1. Annual Base Rental. Annual base rental shall be paid on the first day of each and every calendar month from and after the Rent Commencement Date by LESSEE to LESSOR at LESSOR's principal place of business first described above, in United States dollars, as follows:

Lease years 1 through 25: Net operating income derived from the commercial center shall be committed by NHHCA to fund and support the building and development of the Agnes K. Cope Hawaiian Cultural Center. Any excess of net operating income shall be subject to the agreed upon rent structure of 20 % due and payable to DHHL.

Lease years 26 through 65: Annual base rental shall be re-opened as provided in Section 2 below. There are no rental charges for the multi-use cultural center or the low-income rental housing project.

Base rental payable for any month shall be proportionately reduced for any partial month during the term. The "Rent Commencement Date" is \_\_\_\_\_. The first lease year shall commence on the Effective Date with succeeding lease years commencing on each succeeding anniversary of such Effective Date.

2. Reopening of Annual Base Rental. The annual base rental hereinabove reserved shall be reopened and re-determined at the expiration of the twenty-fifth (25<sup>th</sup>) lease year of the term for the next ensuing ten-year period comprising lease years 26-35, and shall be reopened and redetermined at the expiration of the thirty-fifth (35<sup>th</sup>) lease year for the next ensuing ten-year period comprising lease years 36-45, and shall be reopened and redetermined at the expiration of the forty-fifth (45<sup>th</sup>) lease year for the next ensuing ten-year period comprising lease years 46-55, and shall be reopened and redetermined at the expiration of the fifty-fifth (55<sup>th</sup>) lease year for the next ensuing ten-year period comprising lease years 56-65, respectively, to an amount equal to the then fair market rental value of the Premises at the commencement of such reopening period as if the Premises were unencumbered by this Lease and based on the use or uses then permitted to be made on the Premises under the applicable County zoning, as such uses may be further restricted by the terms of this Lease (referred to hereafter as the "fair market rental value" of the Premises), all as shall be determined by mutual agreement between LESSOR and LESSEE. If LESSOR and LESSEE fail to mutually agree upon the fair market rental value of the Premises which shall be the annual base rental for the reopening period at least ninety (90) days prior to the commencement of each of the reopening periods, the proposed new annual base rental shall be determined by an appraiser whose services shall be contracted for by LESSOR who shall determine the fair market rental value of the Premises; provided, that should LESSEE fail to agree upon the fair market rental value of the Premises as determined by LESSOR's appraiser, LESSEE shall promptly appoint its own appraiser and give written notice thereof to LESSOR, and in case LESSEE shall fail to do so within thirty (30) days after being advised of the fair market rental value as determined by LESSOR's appraiser, LESSOR may apply to any person then sitting as judge of the Circuit Court of the judicial circuit in which the Premises are located for appointment of a second appraiser, and the two appraisers thus appointed in either manner shall have thirty (30) days (or such additional time as LESSOR and LESSEE shall mutually agree) to resolve any disagreement on the fair market rental value determination and settle the reopened rent for the ensuing reopening period. Should both appraisers fail to agree upon the fair market rental value of the Premises within this 30-day period (as the same may be extended by mutual agreement of LESSOR and LESSEE), they shall appoint a third appraiser. In case of their failure to do so within fifteen (15) days, either party may have the third appraiser appointed by the judge and the fair market rental value of the Premises shall be determined by arbitration as provided in Chapter 658A, Hawaii Revised Statutes. Each appraiser, whether appointed by a party to the Lease or by the Circuit Court, shall have the following minimum qualifications: at least five (5) years experience in appraising commercial real property and hold a current MAI or SREA designation. The decision of the appraisers or a majority of them shall be final, conclusive and binding upon both parties hereto. The appraisers so appointed shall deliver their determination before the ninetieth (90th) day following appointment of the third appraiser, and, in the event they shall fail to do so and the time for delivery of such determination shall not have been extended by mutual agreement of LESSOR and LESSEE, the employment of

the appraisers shall immediately terminate and, except as may be approved by LESSOR and LESSEE in the exercise of their sole and absolute discretion with respect thereto, the appraisers shall not be entitled to any payment for services or reimbursement of expenses incurred because of such appointment. In the event the employment of the appraisers shall be so terminated, new appraisers shall be appointed in the manner hereinbefore provided. LESSEE shall pay for its own appraiser, LESSOR shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by LESSEE and LESSOR. Upon completion of the arbitration procedure, all appraisal reports shall become part of the public record of LESSOR. If the rental for any ensuing period has not been determined prior to the expiration of the preceding rental period, LESSEE shall continue to pay the rent effective for the previous rental period, but LESSEE shall, within thirty (30) days after the new rental has been so determined, make up the deficiency, if any plus interest thereon at the rate of ten percent (10.0%) per annum from the due date for each payment of the additional rent.

#### ARTICLE FOUR

##### THE PARTIES HEREIN COVENANT AND AGREE AS FOLLOWS:

1. Payment of Rent. LESSEE shall pay the rent to LESSOR at the times, in the manner and form provided in this Lease and at the place specified above, or at any other place LESSOR may from time to time designate, in legal tender of the United States of America.

2. Taxes and Assessments. (a) LESSEE shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which the Premises or any part, or any improvements, or LESSOR or LESSEE in respect thereof, are now or may be assessed by governmental authorities during the term of this Lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, LESSEE shall be required to pay only those installments, together with interest, which become due and payable during the term; (b) LESSEE shall reimburse to LESSOR, upon demand, any and all conveyance and transfer taxes payable with respect to this transaction, or with respect to any document to which LESSEE is a party, creating or transferring an interest or an estate in the Premises; and (c) LESSEE shall have the right to contest any tax, rate, assessment or other charge imposed against the Premises provided, however, that any such proceeding shall be brought by LESSEE only after payment by LESSEE as hereinabove provided of such taxes, assessments or other charges or impositions if required by law as a condition to bringing such proceeding, and if any such proceeding be brought by LESSEE, LESSEE shall defend, indemnify and save harmless LESSOR against any and all loss, costs or expenses of any kind that may be incurred by or imposed upon LESSOR in connection therewith. LESSOR agrees to reasonably cooperate with LESSEE in any application or proceeding to contest such tax, rate, assessment or other charge, provided that all reasonable costs and expenses of LESSOR incurred in connection therewith shall be paid by LESSEE.

3. Utility Services. LESSEE shall pay or caused to be paid all utility charges, duties, rates and, other similar outgoings, including water, sewer, gas, refuse collection, recycling, relocation of utility poles and lines or any other charges, as to which the Premises or any part, or any improvements, or LESSOR or LESSEE in respect thereof, may become liable for during the

term, whether assessed to or payable by LESSOR or LESSEE. LESSEE, at its sole cost and expense, shall be responsible for bringing any and all necessary utility connections to the Premises for its contemplated improvements.

4. Improvements Required by Law. LESSEE shall, at LESSEE's own expense during the whole of the term, make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Premises or any part thereof.

5. Observance of Laws. LESSEE shall at all times during the term keep the Premises in a strictly safe, clean, orderly and sanitary condition, free of any nuisance or improper or offensive use, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Premises or any improvement thereon or use thereof, and shall defend, indemnify and hold harmless LESSOR against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance by LESSEE of said laws, ordinances, rules and regulations or of this covenant.

6. Inspection of Premises. Upon reasonable notice, LESSEE shall permit LESSOR and its agents at all reasonable times during the term of this Lease to enter the Premises and examine the state of repair and condition of the Premises. LESSEE shall repair and make good at LESSEE's own expense all defects required by the provisions of this Lease to be repaired by LESSEE of which written notice shall be given by LESSOR or its agents within thirty (30) days after the giving of such notice, or if such defect is not reasonably susceptible to repair within said thirty (30) day period, LESSEE shall undertake to repair such defect within said thirty (30) day period and shall diligently and expeditiously proceed to complete the steps or action necessary to repair the defect. If for any reason LESSEE shall fail to commence and complete such repairs within the time period specified herein, LESSOR may, but shall not be obligated to, make or cause to be made such repairs and shall not be responsible to LESSEE or anyone claiming by, through or under LESSEE for any loss or damage to the occupancy, business or property of any of them by reason thereof (except to the extent such loss or damage is the result of the gross negligence or willful misconduct of LESSOR or LESSOR's agents or employees in effecting any such repairs), and LESSEE shall pay to LESSOR, within ten (10) days following written demand by LESSOR, and as additional rent, all costs and expenses paid or incurred by LESSOR in connection with such repairs.

7. Improvements.

(a) Initial Development. Because time is of the essence, LESSEE shall implement a scheduled program of development. Plans for the scheduled development project shall be submitted to LESSOR for approval within six (6) months from the commencement date of the lease. LESSEE shall have thirty-six (36) months from the commencement date of the lease to complete the development project.



(b) Governmental Approvals and Permits. Before commencing any construction of buildings or improvements on the Premises, LESSEE shall seek and secure all approvals and permits which may be required from any governmental authority having jurisdiction thereof, including, without limitation, governmental requirements from time to time in effect regarding land, air and water use or emissions and noise emissions and Hazardous Materials. LESSEE shall bear all costs and expenses of obtaining the necessary approvals and permits.

(c) Construction of Improvements. LESSEE shall not construct or place on the Premises any building or other improvement, including fences and walls, nor make any additions or structural alterations costing more than Fifteen Thousand Dollars (\$15,000) to any building thereon, nor erect or place any signs or other exterior fixtures on the Premises, except with the prior written consent of LESSOR and upon those conditions LESSOR may impose. LESSEE shall own these improvements until the expiration or termination pursuant to a breach of the lease, at which time the ownership shall automatically be vested in LESSOR.

(d) Bonds and Security Deposit. LESSEE shall, at its own cost and expense, within thirty (30) days from the lease execution date, deposit with LESSOR and thereafter keep in full force and effect during the term of this Lease, a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by LESSEE of all of the terms, covenants and conditions of this lease. The amount of the bond must equal the annual rent under the Lease, the initial amount to be established at the time of the auction of the LESSEE, and thereafter shall be adjusted to equal the annual rental determined at each lease rental reopening date and each stepped-up lease rent date. There shall be attached to the bond an affidavit by a surety or sureties pursuant to and in accordance with the provisions contained in Section 78-20, Hawaii Revised Statutes, provided, however, LESSEE may furnish a bond in like amount, conditioned as aforesaid, executed by LESSEE alone as obligor, if, in lieu of any surety or sureties, LESSEE shall also furnish and at all times thereafter keep and maintain on deposit bonds, stocks, or other negotiable securities properly endorsed, or executed and deliver to LESSOR a deed or deed of trust of real property, all of such character as shall be satisfactory to LESSOR and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value at which securities may be accepted and at any time thereafter held by LESSOR under the foregoing provision shall be determined by LESSOR, and LESSEE may, with the approval of LESSOR, exchange other securities or money for any of the deposited securities, if in the judgment of LESSOR the substitute securities or money is at least equal in value to those withdrawn.

It is further agreed that LESSEE may substitute the sureties with a security deposit equal to three months of the established rent pursuant to an action taken by the Hawaiian Homes Commission on June 26, 1990. The security deposit shall be adjusted to equal the three months rent determined at each lease rent reopening date. The deposit shall be refunded without interest to LESSEE at the expiration of the Lease or upon assignment of the Lease.

(e) Compliance with Americans with Disabilities Act.

(i) Applicable Laws. LESSEE shall cause drawings and specifications to be prepared for, and shall cause to be performed, any construction, alteration or renovation of the Premises, including signage, in accordance with all applicable laws, ordinances and regulations of all duly constituted authorities, including, without limitation, Title III of the Americans with Disabilities Act of 1990 (the "ADA"); 42 U.S.C. 12181-12183, 12186(b)-12189, the ADA Accessibility Guidelines promulgated by the Architectural and Transportation Barriers Compliance Board, the public accommodations title of the Civil Rights Act of 1964, 42 U.S.C. 200a et. Seq., the Architectural Barriers Act of 1968, 42, U.S.C. 4151 et. Seq., as amended, Title V of the Rehabilitation Act of 1973, 29 U.S.C. 790 et seq., the Minimum Guidelines and Requirements for Accessible Design, 36 C.F.R Part 1190, and the Uniform Federal Accessibility Standards, as the same are in effect on the date hereof and may be hereafter modified, amended or supplemented (all such laws, ordinances, regulations and guidelines regarding access collectively called "Public Accommodations Laws").

(ii) Responsibility for Compliance. Notwithstanding LESSOR'S review of such drawings and specifications, and whether or not LESSOR approves or disapproves such drawings and specifications, LESSEE and not LESSOR shall be responsible for compliance of such drawings and specifications and of all Public Accommodations Laws. LESSEE shall defend, pay, indemnify and hold LESSOR harmless against all reasonable costs and expenses (including reasonable attorney's fees), losses, damages and liabilities incurred by LESSOR which may be attributable to: (A) LESSEE's alleged failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; (B) LESSOR's investigation and handling (including the defense) of LESSEE's failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; (C) any amounts assessed against LESSOR pursuant to any Public Accommodations Law based upon LESSOR's ownership of the Premises; and (D) LESSOR's enforcement of this paragraph, whether or not suit is brought therefore. All the above amounts shall constitute additional rent and shall be payable on demand with interest at the rate of ten percent (10%) per annum.

8. Repairs to Improvements. LESSEE shall, at its own expense, keep, repair and maintain all buildings and other improvements now existing or hereafter constructed or installed on the Premises in good and safe order, condition and repair, reasonable wear and tear excepted.

9. Assignment.

(a) No Assignment Without Consent. LESSEE shall not assign this Lease without the prior written consent of LESSOR, which consent LESSOR shall not unreasonably withhold. Any assignment without LESSOR's prior express written consent shall be void.

(b) Assumption of Lease. Any assignment of this Lease shall be specifically made and therein expressly stated to be made subject to all terms, covenants and conditions of

this Lease, and the assignee therein shall expressly assume and agree to all such terms, covenants and conditions.

(c) Compliance with Hawaii Revised Statutes §171-36(a)(5). LESSOR may withhold its consent to any assignment unless the assignment meets the requirements of Hawaii Revised Statutes §171-36(a)(5), or any other successor statute imposing conditions on the assignment of leases of Lessor's lands.

(d) No Change of Use. No assignment shall be permitted if the assignee contemplates or proposes any change in the use of the Premises from that expressly permitted by this Lease.

(e) LESSOR's Response. LESSOR shall respond to any request for its consent to an assignment of this Lease within thirty (30) days following LESSOR's receipt of all financial statements, documents and other information reasonably necessary for LESSOR to make its determination (or within such longer time as may be reasonably required by it and of which it shall notify LESSEE within such thirty (30) day period). If LESSOR shall fail to approve or disapprove of a request for consent within the thirty (30) day period as the same may be extended, LESSOR's approval shall be conclusively presumed.

(f) "Assignment" Defined. The term "assignment" as used in this Lease shall mean and include one or more sales or transfers by operation of law or otherwise by which:

(i) if LESSEE is a corporation, an aggregate of fifty percent (50%) or more of the total common stock or any class of voting stock of LESSEE;

(ii) if LESSEE is a partnership, an aggregate of fifty percent (50%) or more of the total partnership interests of LESSEE or a change of control of any general partner of LESSEE;

(iii) if LESSEE is a limited liability company, whether member-managed or manager-managed, an aggregate of fifty percent (50%) or more of the total membership interests of LESSEE or a change of control of any managing member of LESSEE;

(iv) if the LESSEE is any other form of entity, an aggregate of fifty percent (50%) or more of the legal, beneficial or other cognizable interests therein or in the governance, administration or control thereof; shall become vested in one or more individuals, firms, associations, corporations, partnerships, limited liability companies or other entities, or any derivative or combination thereof, who or which did not own directly not less than a ten percent (10%) interest, legally or equitably, in the LESSEE as of the Commencement Date or as of the date of LESSEE's subsequent acquisition of this Lease by assignment, with the ownership of such interests in LESSEE being determined in accordance with the principles enunciated in Sections 318 and 544 of the Internal Revenue Code of 1986; provided, however, that the foregoing definition shall not apply with respect to a corporate LESSEE whose capital stock is listed on a recognized stock exchange or on the NASDAQ; provided, however, that a merger or acquisition of fifty percent (50%) or more of the outstanding stock of any such LESSEE shall be

construed to be an assignment and shall require Landlord's consent unless the successor or acquiring corporation has a net worth equal to or greater than LESSEE had at the time this Lease was executed, or at the time of any such merger or acquisition (whichever shall be the later); and provided further that, if LESSEE is a corporation, a change in ownership of the stock of LESSEE resulting from the death of a stockholder shall not be deemed a default hereunder if the decedent's shares pass to a surviving spouse and/or issue or to a trust for the primary benefit of such spouse or issue.

10. Subletting. LESSEE shall not, without the prior written consent of LESSOR, which consent shall not be unreasonably withheld or delayed, have the right to sublease all or any portion of the Premises, provided, however, that prior to LESSOR approval, LESSOR shall have the right to review and approve the rent to be charged to the proposed sublessee; provided further, that the LESSOR shall have the right to revise, if necessary, the lease rent of the Premises based upon the rental rate charged to the proposed sublessee, pursuant to the Sublease Rent Participation Policy adopted by the Hawaiian Homes Commission on April 24, 1987, a copy of which is attached herewith as Exhibit E, and provided further, that the base rent may not be revised downward. The term of any such sublease shall not exceed the term of this Lease.

11. Liens. LESSEE shall not commit or suffer any act or neglect by which the Premises or the respective estates of LESSEE or LESSOR therein shall at any time during the term become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, including mechanics' and materialmen's liens, and shall indemnify, defend, save and hold LESSOR harmless from and against all loss, cost and expense with respect thereto (including reasonable attorneys' fees). If any order directing the attachment of any lien for work, labor, services or materials done for or supplied to the Premises regardless of who contracted therefor is filed against the Premises, LESSEE shall have sixty (60) days from the date of filing in which to cause such lien to be discharged of record by payment, deposit or bond or otherwise stayed to the reasonable satisfaction of LESSOR. Subject to the foregoing, LESSEE may contest in good faith by any appropriate proceedings prosecuted in a diligent and timely manner, the amount or validity of any such attachment, judgment, lien, charge or encumbrance, and, if permitted by applicable law, upon making deposit or posting bond, may defer payment thereof until final determination of such contest. LESSEE's obligations under this Section 11 shall survive the termination of this Lease.

12. Permitted Uses. LESSEE shall be permitted to use the Premises for the following purposes as shown in the preliminary development plans:

- (a) Commercial Center
- (b) Agnes K. Cope Hawaiian Cultural Center
- (c) Hale Makana O Nanakuli Rental Housing Project
- (d) NHHCA shall be allowed to subdivide or partition the parcel with metes and bounds to satisfy the requirements of its lenders.

13. Indemnity.

(a) LESSEE shall indemnify and hold LESSOR harmless from and against all liens, claims and demands for loss or damage, including property damage, personal injury and wrongful death, from (i) any cause whatsoever arising out of or in connection with the use, occupancy and enjoyment of the Premises by LESSEE or any other person thereon or claiming under it, including, without limitation, any harm resulting therefrom to LESSOR, persons claiming under LESSOR, other tenants of LESSOR, third parties, the aquifer underlying the Premises, the water therein, the soil of the Premises and surrounding lands and the air, or (ii) any failure by LESSEE to keep the Premises and sidewalks in a safe condition. LESSEE shall reimburse LESSOR for all of LESSOR's costs and expenses, including reasonable attorneys' fees, incurred in connection with the defense of any such liens, claims, and demands. LESSEE shall hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises at its sole risk and shall hold LESSOR harmless from and against any loss or damage thereto by any cause whatsoever. The obligation to indemnify shall include all fines and penalties and all reasonable costs LESSOR may incur in connection with any such lien, claim and demand, including reasonable attorneys' fees and investigation costs, from the first notice that any lien, claim or demand is to be made or may be made. LESSEE shall satisfy LESSOR of its ability to so indemnify LESSOR by means satisfactory to LESSOR, which, at the discretion of LESSOR, may include any or all of insurance bonds, security deposits, sinking funds or such other means as may be approved in writing by LESSOR. LESSEE's obligations under this section shall survive the termination of other determination of this Lease and shall continue in full force and effect for the benefit of LESSOR.

(b) Immediately upon discovery thereof, LESSEE shall give written notice to LESSOR of any claims, actions or causes of action concerning the Premises, or any claims, actions or causes of actions that may subject LESSOR to liability, risk of loss or binding adjudication of rights.

14. Costs of Litigation. In case either party shall, without fault on its part, be made a party to any litigation commenced by the other party or against the other party (other than condemnation proceedings), the other party shall pay all costs, including reasonable attorney's fees and expenses incurred by or imposed on the party joined without fault on its part.

15. Insurance. At all times during the term of this Lease, LESSEE shall purchase and maintain, at LESSEE's sole expense, the following policies of insurance in amounts not less than the amounts specified below, or such other amounts as LESSOR may from time to time reasonably request, with insurance companies and on forms reasonably satisfactory to LESSOR:

(a) Commercial Property Insurance.

(i) Coverage. A policy or policies of commercial property insurance covering all buildings, structures and other improvements on the Premises, and including without limitation, all furniture, fixtures, machinery, equipment, stock and any other personal property owned and/or used in LESSEE's business, whether made or acquired at LESSEE's, LESSOR's or at another's expense, in an amount equal to their full replacement cost at time of loss, without

deduction for depreciation. The insurance shall be written on an Insurance Services Office, Inc. ("ISO") Commercial Property Policy - "Special Form" Causes of Loss form as from time to time filed with the Hawaii Insurance Commissioner, or its equivalent, and at a minimum such policy shall insure against destruction or damage by fire and other perils covered under such an ISO policy, with additional coverage for risk of loss by flood, hurricane and tsunami (to the extent such coverage is available at commercially reasonable cost), perils normally insured under a policy of boiler and machinery insurance, and such other hazards or risks which a prudent business person would insure against. The policy(ies) required under this Lease shall provide replacement cost coverage (exclusive only of excavation, foundations and footings), and shall include Building Ordinance/Law coverage (for increased costs of demolition and repair due to changes in building codes or zoning ordinances). Except with LESSOR's prior written consent, which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of \$10,000 for any one occurrence.

(ii) Trust. In the event that proceeds for loss or damage are paid under any property insurance policy required by this Lease and unless otherwise agreed to in writing by LESSOR, all such loss payment proceeds shall be deposited with a trust company designated by LESSOR to receive all such proceeds, which trustee shall have its principal office in Honolulu and be authorized to exercise corporate trust powers in the State of Hawaii. The trustee shall have no obligation whatsoever to effect, maintain or renew such insurance nor to attend to any claim for lesser damage thereunder or the collection of any proceeds thereof nor to incur any expense therefor, and shall be responsible only for the proper custody and application as herein provided of all such proceeds that actually shall come into its possession. LESSEE shall pay all fees and expenses of such trustee for or in connection with its services.

(iii) Use of Proceeds. In every case of loss, all proceeds of such insurance (excluding the proceeds of any rental value or use and occupancy insurance of LESSEE) shall be immediately available to and be used as soon as reasonably possible by LESSEE for rebuilding, repairing or otherwise reinstating the same improvements in good and substantial manner according to the plan and elevation of the improvements so destroyed or damaged or according to such modified plan as shall have been first approved in writing by LESSOR. In the event that such insurance proceeds shall be insufficient, LESSEE shall make up any deficiency from its own funds; provided, however, that if the principal improvement on the Premises shall be destroyed at any time during the last ten (10) years of the term of this Lease (or any extension hereof), LESSEE shall have the option, exercisable within sixty (60) days after such casualty, to surrender this Lease subject to compliance with the provisions of Section 16 of Article Four and thereby forfeit all interest in such insurance proceeds and in any improvements remaining on the Premises, all of which shall thereupon be payable to and be the sole property of LESSOR.

(b) Liability Insurance.

(i) Commercial General Liability Insurance. Commercial general liability or commercial general liability and excess or umbrella liability insurance written on an "occurrence" form covering the use, occupancy and maintenance of the Premises and all operations of Lessee including: Premises Operations; Independent Contractors; Products -

Completed Operations; Blanket Contractual Liability; Personal and Advertising Injury; Fire Legal Liability; Employees Named as Additional Insureds; Medical Expense; elevator collision; and incidental medical malpractice. Such insurance shall be written on an ISO Commercial General Liability Policy form or its equivalent.

(1) Limits. Limits for such coverage shall be determined.

(2) Deductible. Except with LESSOR's prior written approval, which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of \$10,000 for any one occurrence.

(3) Application of General Aggregate. The policy(ies) of insurance shall further contain a provision that the general aggregate limit applies exclusively to the Premises and the operations conducted thereon.

(ii) Workers' Compensation and Employers' Liability Insurance. Workers' Compensation and Employers' Liability insurance as required by HRS Chapter 386 and regulations thereunder, as the same may be amended from time to time, for all employees of LESSEE.

(1) Limits for such coverage shall be not less than the statutory limits for Workers' Compensation and the following for Employers' Liability: \$1,000,000 Each Accident; \$1,000,000 Disease - Policy Limit; and \$1,000,000 Disease - Each Employee.

(2) The policy shall further contain an endorsement providing a waiver of subrogation in favor of LESSOR and its employees.

(c) Umbrella Liability. Umbrella Liability Insurance providing excess coverage over Commercial General Liability, Employer's Liability, and Automobile Liability Insurance. The Umbrella Liability policy shall be written on an "occurrence" form with a limit of liability of not less than \$2,000,000 per policy year and a self-insured retention and/or deductible no greater than \$10,000.

(d) Builder's and Installation Risk. Builder's and installation risk insurance while the Premises or any part thereof are under construction, written on the Builder's Risk Completed Value form (nonreporting full coverage), including coverage on equipment, machinery and materials not yet installed but to become a permanent part of the Premises.

(e) General Policy Terms. All policies of insurance required to be maintained pursuant to this section covering loss or damage to any of LESSEE's property shall provide that the insurer is required to provide LESSOR with at least thirty (30) days (or not less than ten (10) days in the case of nonpayment of premiums) prior written notice of cancellation or non-renewal of any such insurance policy. LESSEE shall pay all premiums thereon when due and shall from time to time deposit promptly with LESSOR current policies of such insurance or certificates thereof. All public liability and property damage policies shall be in the joint names of and for the mutual and joint benefit and protection of LESSOR, LESSEE, and LESSEE's mortgagee(s), as their respective interests may appear, and shall contain a provision providing that LESSOR,

although named as an additional insured, shall not be denied any recovery under the policy(ies) for any loss occasioned to it, its servants, agents and employees by reason of the acts, omissions and/or negligence of LESSEE which recovery would be possible if LESSOR were not named as an additional insured. As often as any such policy shall expire or terminate, LESSEE shall procure and maintain renewal or additional policies in like manner and to like extent. All general liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which LESSOR may carry.

(f) Periodic Review of Insurance Coverages. LESSOR shall retain the right at any time, but not more frequently than once every three (3) years, to review the coverage, form, and amount of the insurance required by this Lease. If, in the reasonable judgment of LESSOR, the insurance provisions in this Lease do not provide adequate protection for LESSOR in light of then prevailing practices under leases of similar properties in the State of Hawaii, LESSOR may require LESSEE to obtain insurance sufficient in coverage, form, and amount to provide such additional protection. LESSOR's requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LESSOR shall notify LESSEE in writing of changes in the insurance requirements and LESSEE shall deposit copies of acceptable insurance policies or certificates thereof with LESSOR incorporating the reasonably required changes within sixty (60) days of receipt of such notice from LESSOR.

16. Surrender. At the end of the term or other sooner determination of all or a portion of this Lease, LESSEE shall peaceably deliver up to LESSOR possession of the land hereby demised, including all buildings and other improvements upon or belonging to the same, by whomsoever made, in good repair, order and condition, except for reasonable wear and tear, and in strictly clean, safe and sanitary condition; provided, however, that if LESSEE is not in default hereunder, it may then remove any trade fixtures installed by it on the Premises but shall repair promptly to LESSOR's satisfaction all damage caused by such removal; provided, further, that if LESSOR, in its sole discretion, shall determine that such improvements or portions thereof should be removed and shall give LESSEE written notice of such determination within thirty (30) days of such termination, LESSEE, at no cost to LESSOR and with as little damage to the Premises as is reasonably possible, shall remove promptly said improvements or portions thereof in accordance with applicable law and shall leave the Premises in clean and orderly condition free of all debris.

Upon such termination or sooner determination, LESSEE shall, at LESSEE's cost and expense, provide LESSOR with evidence satisfactory to LESSOR that LESSEE has fully complied with all applicable law or orders by any governmental authority having jurisdiction therefor, including, without limitation, full compliance with any closure plan filed or required to be filed with any such governmental authority and removal from the Premises of all Hazardous Materials and other materials that may cause damage or injury to the environment or health.

If, within thirty (30) days after such termination or sooner determination of this Lease, such evidence shall not have been provided LESSOR, or if LESSOR shall have requested removal of improvements and LESSEE shall not have removed said improvements, LESSOR may effect such full compliance or removal on behalf of LESSEE. All costs incurred by



LESSOR in effecting such compliance or removal shall be at LESSEE's expense and LESSEE shall, within thirty (30) days from LESSEE's receipt of demand by LESSOR, reimburse LESSOR for such costs, together with interest as provided in Section 10 of Article Five of this Lease. Until such full compliance or removal is completed, either by LESSEE or LESSOR, and all costs therefor have been paid by LESSEE or reimbursed by LESSEE to LESSOR, together with interest thereon, if any, the Premises and this Lease shall not be deemed surrendered even though LESSEE has vacated the Premises, and LESSEE shall continue to incur and pay annual rent on the Premises or portion thereof being surrendered in an amount equal to twice (2X) the total of annual rent paid by LESSEE during the Lease year just preceding termination, prorated for the period of time from termination to the time surrender is completed.

LESSEE shall not be relieved of its obligations under this Lease until surrender is completed in accordance with the provisions of this section. Final inspection and release of the Premises by concerned governmental agencies, if any, and by LESSOR shall be a condition precedent to completion of surrender and termination of LESSEE's obligations hereunder. Nothing herein shall be deemed to relieve LESSEE of an obligation, such as the obligation to indemnify LESSOR, which by its specific terms survives termination.

17. Processing Fees/Documentation. LESSEE agrees to pay to LESSOR, LESSOR's standard fees for LESSOR's processing of consents and assignments and providing documents required or authorized by the terms, covenants, and conditions of this Lease.

18. Hazardous Materials.

LESSEE shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of or allow to exist on, under or about the Premises any Hazardous Materials, except in compliance with all applicable Hazardous Materials Laws.

LESSEE shall immediately advise LESSOR in writing of (i) any and all enforcement, clean up, removal, mitigation or other governmental or regulatory actions instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Premises, (ii) all claims made or threatened by any third party against LESSEE or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials, (iii) LESSEE's discovery of any occurrence or condition on the Premises or any real property adjoining or in the vicinity of the Premises which could subject LESSEE, LESSOR or the Premises to any restrictions on ownership, occupancy, transferability or use of the Premises under any Hazardous Materials Laws.

LESSEE shall cause any Hazardous Materials on the Premises to be (A) remediated on-site in accordance with applicable Hazardous Materials Laws, or (B) removed from the Premises for remediation or disposal and to be transported solely by duly licensed Hazardous Materials transporters to duly licensed disposal facilities for final disposal to the extent required by and in accordance with applicable Hazardous Materials Laws, and shall deliver to LESSOR copies of any hazardous waste manifest reflecting the proper disposal of such Hazardous Materials. Except in emergencies or as otherwise required by law, LESSEE shall not take any remedial or removal action in response to the presence, release or threatened release of any Hazardous

Materials on or about the Premises without first giving written notice of the same to LESSOR and obtaining LESSOR's written consent thereto.

LESSEE shall not enter into any legal proceeding or other action, settlement, consent decree or other compromise with respect to any Hazardous Materials claims without first notifying LESSOR of LESSEE's intention to do so and affording LESSOR the opportunity to join and participate, as a party if LESSOR so elects, in such proceedings. Except as provided above, LESSEE shall be solely responsible for and shall indemnify, defend and hold harmless LESSOR and LESSOR's employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to LESSEE's use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials, on, under or about the Premises (except those released on the Premises prior to the commencement of this Lease, or after such commencement by LESSOR or its agents), including (A) the costs of any required or necessary removal, repair, cleanup or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial or other required plans; and (B) all reasonable costs and expenses incurred by LESSOR in connection therewith, including, without limitation, reasonable attorneys' fees.

Within thirty (30) days of receipt thereof, LESSEE shall provide LESSOR with a copy of any and all environmental assessments, audits, studies and reports regarding LESSEE's past or current activities on the Premises or the environmental condition of the Premises, in each case, in LESSEE's possession or control.

The covenants of this Section 19 of Article Four, including, without limitation, the indemnification provisions, shall survive the expiration or termination of this Lease, or any termination of LESSEE's interest in the Premises.

19. Underground Storage Tank (UST). A UST is any tank, including underground piping connected to the tank, that has at least ten percent (10%) of its volume underground and is used for the storage of certain regulated substances like petroleum or certain hazardous chemical. Prior consent and approval from LESSOR is required for the installation of any UST on the Premises, which consent and approval shall not be unreasonably withheld or delayed. All USTs are considered trade fixtures and are to be removed upon termination or expiration of the Lease by LESSEE. IF LESSEE has installed a UST, then and in such event, LESSEE shall arrange, at its sole cost and expense, for the removal of any such UST at the end of the term of this Lease and upon such removal shall arrange to be provided to LESSOR within ninety (90) days after the end of such Lease term a satisfactory UST closure report prepared by a recognized Hawaii environmental engineer and accepted by the Department of Health of the State of Hawaii. If any clean up procedures and/or remediation is necessary as a result of the installation of such UST then and in such event, LESSEE shall arrange to have all such work done, at LESSEE's sole cost and expense, by an environmental engineering company reasonably acceptable to LESSOR, in accordance with all then applicable regulations and requirements of the State of Hawaii, Department of Health.

LESSEE during any period when LESSOR shall be forbearing in the termination of this Lease as above provided, but in such event Mortgagee shall have all of the rights and protections herein provided.

(e) LESSEE may delegate irrevocably to Mortgagee the authority to exercise any or all of LESSEE's rights under this Lease, but no such delegation shall be binding upon LESSOR unless and until either LESSEE or Mortgagee shall deliver to LESSOR a signed counterpart, in form proper for recording, of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Mortgage itself, in which case the service upon LESSOR of an executed counterpart of the Mortgage in accordance with this Section, together with a written notice specifying the provisions therein which delegate such authority to Mortgagee, shall be sufficient to give LESSOR notice of such delegation. Any provision of this Lease which gives to Mortgagee the privilege of exercising a particular right of LESSEE hereunder on condition that LESSEE shall have failed to exercise such right shall not be deemed to diminish any privilege which Mortgagee may have, by virtue of a delegation of authority from LESSEE, to exercise such right without regard to whether or not LESSEE shall have failed to exercise such right.

(f) In the event of the commencement of a bankruptcy proceeding by or against LESSEE, the Mortgagee shall have the option, and LESSOR shall recognize the Mortgagee's right, within the statutory time period or any extension thereof provided under Section 365 of the Bankruptcy Code for the rejection or assumption of lease, to obtain or cause LESSEE and/or trustee in bankruptcy to obtain:

(i) An extension of the period during which the Lease may be assumed or rejected; or

(ii) An abandonment of the leasehold estate by LESSEE and/or trustee in bankruptcy court pursuant to Section 554 of the Bankruptcy Code, as amended; or

(iii) An assumption of the Lease pursuant to Section 365 of the Bankruptcy Code, as amended.

In the event of the commencement of a bankruptcy proceeding by or against LESSEE, LESSOR agrees and acknowledges for the exclusive benefit of the Mortgagee and any person or entity acquiring an interest in the Lease in or in lieu of the foreclosure of the Mortgage, that the actual or deemed rejection of the Lease under Section 365 of the Bankruptcy Code (11 United States Code Section 365) or any other law having similar effect, shall not effect a termination of the Lease or affect or impair the Mortgagee's lien thereon or rights with respect thereto, provided however, that this provision is not intended and shall not be deemed to confer any rights or benefits upon LESSEE or LESSEE's bankruptcy trustee, and upon written request of the Mortgagee delivered to LESSOR within thirty (30) days following the Mortgagee's receipt of written notice of such actual or deemed rejection of the Lease, LESSOR shall, at the option of the Mortgagee, execute and deliver to the Mortgagee or its designee an instrument (in form acceptable to Mortgagee or its designee) recognizing, confirming and giving legal effect to the continued existence of the Lease, with its original validity and priority, in favor of the Mortgagee

or its designee (hereinafter called the "Confirmation of Lease"), subject to the lien of the Mortgage and any lien or encumbrance prior to the lien of the Mortgage, upon and subject to the following terms and conditions:

(i) The Mortgagee shall pay or cause to be paid to LESSOR at the time of the execution and delivery of the Confirmation of Lease, any and all sums which are at the time of execution and delivery thereof due under the Lease and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees, which LESSOR shall have incurred by reason of the actual or deemed rejection of the Lease and the execution and delivery of the Confirmation of Lease;

(ii) The Mortgagee or its designee shall undertake, by accepting the Confirmation of Lease, to perform all covenants and conditions of the Lease reasonably capable of performance by the Mortgagee or such other person or entity. The Mortgagee or its designee, as the case may be, may assign the Lease or may foreclose upon the Mortgage without further consent of LESSOR and the Mortgagee or its designee shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such Lease contained and on LESSEE's part thereunder to be performed and observed from and after the date of such assignment by the Mortgagee or its designee or upon foreclosure, provided that a certified copy of such assignment be provided to LESSOR; and

(iii) The Mortgagee or its designee under the Lease shall be entitled to and shall have the same right, title and interest in and to the Premises and the buildings and improvements thereon as LESSEE had under the Lease prior to its rejection and LESSOR shall use commercially reasonable efforts to obtain the cooperation of all parties in interest such that any Confirmation of Lease made pursuant to this Agreement shall be prior to any mortgage or other lien, charge or encumbrance on the fee of the Premises which mortgage, lien, charge or encumbrance was junior to the Lease.

2. Breach. Time is of the essence of this agreement and if LESSEE shall become bankrupt, or shall abandon the Premises, or if this Lease and the Premises shall be attached or taken by operation of law, or if any assignment is made of LESSEE's property for the benefit of creditors, or if LESSEE shall fail to observe and perform any of the material terms, covenants and conditions contained in this Lease and on its part to be observed and performed, LESSOR shall deliver a written notice of the breach or default by service, as provided by Section 634-35, or 634-36, Hawaii Revised Statutes, or by registered mail, or certified mail to LESSEE at its last known address; and to each mortgagee or holder of record having a security interest in the Premises, making demand upon LESSEE to cure or remedy the breach or default within sixty (60) days from the date of receipt of the notice [if such default is by its nature not reasonably susceptible of being cured within such 60 day period, such 60 day period may be extended as necessary to provide LESSEE the opportunity to cure the default, provided LESSEE within said period commences and thereafter diligently proceeds to cure such default without interruption until such cure is completed]; provided that where the breach involves a failure to make timely rental payments pursuant to the Lease, the written notice shall include a demand upon LESSEE to cure the breach within less than sixty (60) days, but not less than five (5) business days, after receipt of the notice. Upon failure of LESSEE to cure or remedy the breach or default within the

time period provided herein, or within such additional period as LESSOR may allow for good cause, but subject to the provisions of Section 171-21, Hawaii Revised Statutes, as amended, and subject also to Sections 1(d) and 1(f) of Article Five above, LESSOR, in addition to all other rights and remedies LESSOR may have under this Lease, shall have the following rights:

(a) The right to declare the term of this Lease (or any extension) ended, to re-enter the Premises and take possession thereof and to terminate all of the rights of LESSEE in and to the Premises.

(b) The right, without declaring the term of this Lease (or any extension) ended, to re-enter the Premises and to occupy the same or any portion thereof and/or to lease the whole or any portion thereof, all for and on account of LESSEE as hereinafter provided.

(c) The right, even though LESSOR may have re-let all or any portion of the Premises, at any time thereafter to elect to terminate this Lease for such previous defaults on the part of LESSEE and to terminate all of the rights of LESSEE in and to the Premises.

Pursuant to said rights of re-entry, LESSOR may, but shall not be obligated to, (i) remove all persons from the Premises using such force as may be necessary therefor, (ii) remove all personal property therefrom, including, but not limited to, LESSEE's property, and (iii) enforce any rights LESSOR may have against said personal property, or store the same in any public or private warehouse or elsewhere at the cost and for the account of LESSEE or the owners or owner thereof. After sixty (60) days, personal property so stored shall be considered abandoned. Anything contained herein to the contrary notwithstanding, LESSOR shall not be deemed to have terminated this Lease or LESSEE's liability hereunder (whether such liability accrues before or after LESSOR exercises its rights hereunder) by any such re-entry or other action to obtain possession of the Premises, except as LESSOR may otherwise expressly provide in writing. LESSEE covenants and agrees that the service by LESSOR of any notice in unlawful detainer and the surrender of possession pursuant to such notice shall not be deemed to be a termination of this Lease or of any liability of LESSEE hereunder, except as LESSOR may otherwise expressly provide in writing.

3. Rights of Holder of Record of a Security Interest. In the event LESSOR seeks to forfeit the privilege, interest, or estate created by this Lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach, if the same can be cured or remedied by the payment of money or, if such is not the case, by performing or undertaking in writing to perform all of the terms, covenants and conditions contained in the Lease on LESSEE's part to be performed, capable of performance by the holder, as determined by LESSOR, within the time period provided in Section 171-20, Hawaii Revised Statutes, or within any additional period allowed under Sections 1(d) and 1(f) of Article Five above, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, LESSOR may: (a) pay to the holder from any monies at its disposal the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, LESSOR shall be entitled to the conveyance of the privilege, interest or estate upon payment to the holder of the amount of the

mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to LESSOR, then terminate the outstanding privilege, interest or estate without prejudice to any other right or remedy for arrearages of rent or for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by LESSOR in instituting or prosecuting its rights or remedies under this provision and Section 171-21 of the Hawaii Revised Statutes shall not operate as a waiver of these rights or to deprive it of the remedy when it may still otherwise hope to resolve the problems created by the breach or default involved. The proceeds of any disposition under subparagraph (b) above shall be applied as follows: first, to reimburse LESSOR for costs and expenses in connection with the disposition; second, to discharge in full any unpaid purchase price, indebtedness or damages owing LESSOR in connection with the privilege, interest or estate terminated; third, to Mortgagee to the extent of the value received by LESSOR upon disposition which exceeds the fair market lease value of the land as previously determined by LESSOR's appraiser; and fourth, to the owner of the privilege, interest, or estate.

4. Condemnation. If at any time, during the term of this Lease, all or any portion of the Premises should be condemned, or required for public purposes by the State of Hawaii, or any county or city and county, or any other governmental agency or subdivision, then and in any such event, LESSEE and/or those claiming by, through or under LESSEE shall be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon had been condemned by the State of Hawaii under its power of eminent domain, the amount of such just compensation to be determined in the manner set forth in Section 5 of Article Two. Nothing herein contained shall be construed as preventing LESSEE from being entitled to any separate award made to LESSEE for the taking of LESSEE's personal property, or from claiming all or any portion of its award directly against the condemning authority. The foregoing rights of LESSEE shall not be exclusive of any other to which LESSEE may be entitled by law. In the event that LESSEE reasonably determines that the remainder of the Premises are rendered unusable as the result of any such condemnation LESSEE shall have the right to surrender the Premises and terminate this Lease pursuant to Section 17 of Article Four upon the delivery of written notice to LESSOR.

5. Right to Enter. LESSOR and agents or representatives shall have the right to enter and cross any portion of the Premises other than the building for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, LESSOR shall not interfere unreasonably with LESSEE or LESSEE's use and enjoyment of the Premises.

6. Inspection by Prospective Bidders. LESSOR shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the Premises prior to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to LESSEE, and shall, if LESSEE so requires, be made in the company of LESSEE or

designated agents of LESSEE; provided, further, that no such authorization shall be given more than two (2) years before the expiration or termination of this Lease.

7. Payment or Acceptance of Rent Not a Waiver. The payment or acceptance of rent shall not be deemed a waiver of any breach by LESSOR or LESSEE of any term, covenant or condition of this Lease, nor of LESSOR's right to re-entry for breach of covenant, nor of the right to declare and enforce a forfeiture for any breach, and the failure of LESSOR or LESSEE to insist upon strict performance of any term, covenant or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of such term, covenant, condition or option.

8. Extension of Time. Whenever a party is required to perform an act under this Lease, other than the payment of money, by a certain time, said time shall be deemed extended so as to take into account events of "Force Majeure." "Force Majeure" is any of the following events that prevents, delays, retards or hinders a party's performance of its duties hereunder: act of God; fire; earthquake; volcanic eruption; flood; explosion; war; invasion; insurrection; riot; mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation; strikes; lockouts; condemnation; requisition; acts of governmental, civil, military or naval authorities; or any other cause, whether similar or dissimilar to the foregoing, not within such party's control.

9. Quiet Enjoyment. LESSOR covenants and agrees with LESSEE that upon payment of the rent at the times and in the manner provided and the observance and performance of these terms, covenants and conditions on the part of LESSEE to be observed and performed, LESSEE shall and may have, hold, possess and enjoy the Premises for the term of the Lease, without hindrance or interruption by LESSOR or any other person or persons by, through or under it. LESSOR shall defend the title to the Premises and the use and occupancy of the same by LESSEE against the claims of all persons, except those claiming by or through LESSEE.

10. Interest, Costs and Fees. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency.

In case of any default by LESSEE in the performance of the terms, covenants and conditions herein contained, LESSEE shall pay to LESSOR any and all costs incurred in connection with the default, including reasonable attorneys' fees. In the event that any indebtedness arising hereunder is placed in the hands of a collector or an attorney for collection, or suit is instituted for collection, LESSEE shall pay, in addition to the indebtedness, reasonable collector's and/or attorneys' fees, together with all costs.

11. Hawaii Law/Filing. This Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii. This Lease shall not be recorded although the parties agree to duly execute and file with the Bureau of Conveyances a memorandum of this Lease.

12. Partial Invalidity. If any term, provision, covenant or condition of this Lease should be held to be invalid, void or unenforceable, the remainder of this Lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

13. Notice. Except as otherwise required by Chapter 171, Hawaii Revised Statutes, any notice, request, offer, approval, consent or other communication required or permitted to be given by or on behalf of either party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other party as follows:

If to LESSEE: Nanakuli Hawaiian Homestead Community  
Association (NHHCA)  
89-188 Farrington Highway  
Waianae, Hawaii 96792  
Attn: Mr. Kamaki Kanahele

If to LESSOR: Department of Hawaiian Home Lands(DHHL)  
Hale Kalaniana'ole  
91-5420 Kapolei Parkway  
Kapolei, Hawaii, 96707  
Attn: Land Management Division

And a copy to: Department of the Attorney General  
465 South King Street, Basement  
Honolulu, Hawaii 96813  
Attention: AG-PSHH

Or, at such other address as may be specified from time to time in writing by either party. All such notices hereunder shall be deemed to have been given on the date personally delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

14. Definitions. As used herein, unless clearly repugnant to the context:

(a) "Chairman" shall mean the Chairman of the Hawaiian Homes Commission of the Department of Hawaiian Home Lands of the State of Hawaii or his/her successor.

(b) For the purpose of this Lease, the term "Hazardous Materials" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statute, regulation or ordinance, as amended from time to time, including but not limited to the following statutes and regulations promulgated pursuant to them ("Hazardous Materials Laws"):



Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq.  
("RCRA")  
Comprehensive Environmental Response, Compensation, and Liability Act of  
1980 ("CERCLA") amended by Superfund Amendments and Reauthorization Act  
of 1986 ("SARA"), 42 U.S.C. 9601 et seq.  
Clean Air Act, 42 U.S.C. Sections 7401 et seq.  
Clean Water Act of 1977, 33 U.S.C. 1251 et seq.  
Pesticide Act of 1978, 7 U.S.C. 13 et seq.  
Toxic Substances Control Act ("TSCA"), 15 U.S.C. 2601 et seq.  
Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.  
Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq.  
Chapter 128D, Hawaii Revised Statutes  
Chapters 342B through 342N, Hawaii Revised Statutes,

and including but not limited to petroleum, petroleum based substances, asbestos,  
polychlorinated-biphenyls ("PCBs"), formaldehyde, and also including any substance  
designated by federal, state or local regulation, now or in the future, as presenting a risk to  
human health or the environment.

(c) "Holder of record of a security interest" is a person who is the owner or  
possessor of a security interest in the Premises and who has filed with the Department of  
Hawaiian Home Lands and with the Bureau of Conveyances of the State of Hawaii a copy of this  
interest.

(d) "LESSOR" shall mean and include LESSOR herein, its successors or  
assigns.

(e) "LESSEE" shall mean and include LESSEE herein, its successors or  
permitted assigns.

(f) The "Premises" shall mean the land leased hereunder.

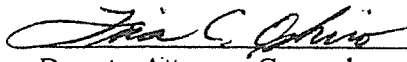
(g) The use of any gender shall include all genders, and if there be more than  
one lessee, then all words used in the singular shall extend to and include the plural.

(h) The paragraph headings throughout this Lease are for the convenience of  
LESSOR and LESSEE and are not intended to construe the intent or meaning of any of the  
provisions thereof.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year first above written.

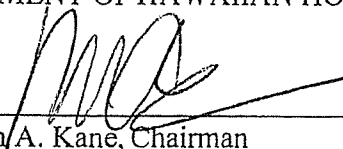
APPROVED BY THE HHC  
AT ITS MEETING HELD ON  
November 20, 2007

APPROVED AS TO FORM:

  
Deputy Attorney General  
State of Hawaii

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

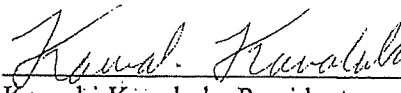
By

  
Micah A. Kane, Chairman  
Hawaiian Homes Commission

LESSOR

NANAKULI HAWAIIAN HOMESTEAD  
COMMUNITY ASSOCIATION,  
A Hawaii Non-Profit Corporation

By

  
Kamaki Kanahele, President

LESSEE

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

)  
) SS:  
)

On this 9<sup>th</sup> day of October, 2008, before me appeared MICAH A. KANE, to me personally known, who, being by me duly sworn, did say that he is the Chairman of the Hawaiian Homes Commission and the person who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the use and purposes therein set forth.

Abigail L. Tubera  
Notary Public, State of Hawaii  
**ABIGAIL L. TUBERA**

Print Name of Notary Public

My commission expires: 11/1/08

Doc. Date: 10/3/08

# Pages: 39

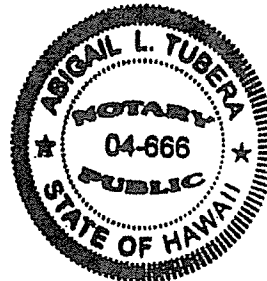
Notary Name: Abigail L. Tubera

First Circuit

Doc. Description: GL 281 - Nanihale

Hawaiian Homestead Community Assn.

Abigail L. Tubera 10/7/08  
Notary Signature Date



STATE OF Hawaii )  
 ) SS.  
CITY & COUNTY OF HONOLULU )

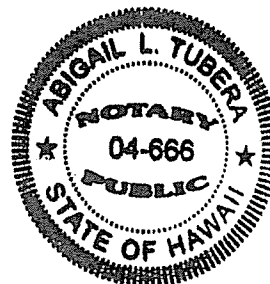
On this 8th day of October, 2008, before me appeared Kamuki Kanahele, to me personally known, who, being by me duly sworn or affirmed did say that he is the President for Kanakuli Hawaiian Homestead Community Association, a Hawaii non-profit corporation and such person executed the foregoing instrument on behalf of said corporation as the free act and deed of such person and in the capacities shown having been authorized to execute such instrument in such capacity.

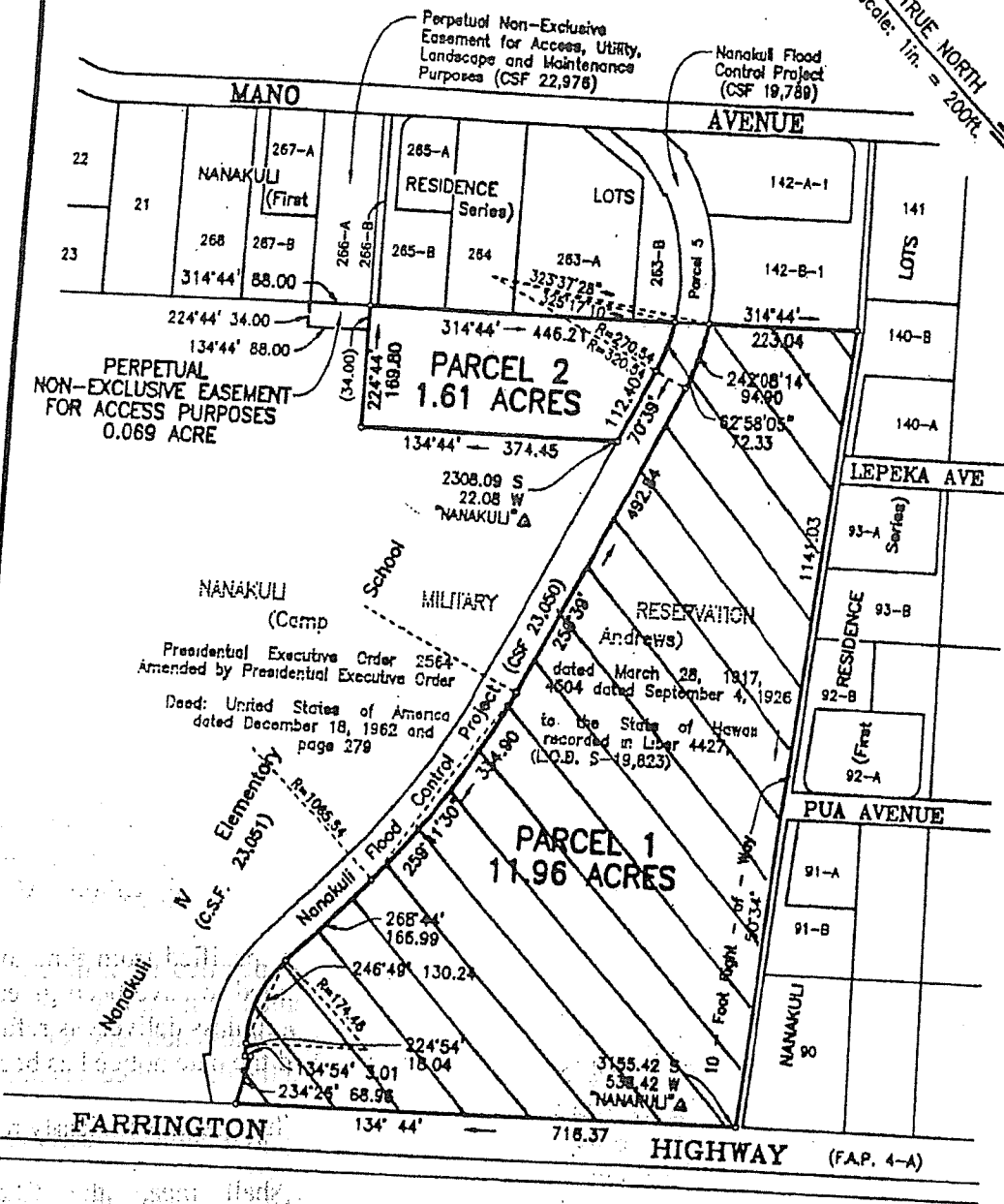
Abigail L. Tubera  
Print or Type Name ABIGAIL L. TUBERA

Notary Public, State of Hawaii

My Commission expires: 11/6/08

Doc. Date: 10/8/08 # Pages: 39  
Notary Name: Abigail L. Tubera First Circuit  
Doc. Description: GL 281 - at  
Kanakuli Hawaiian Homestead Community  
Association  
Abigail L. Tubera 10/8/08  
Notary/Signature Date





PORTIONS OF THE  
FORMER NANAKULI MILITARY RESERVATION  
(CAMP ANDREWS)

PARCELS 1 AND 2

Nanakuli, Waianae, Oahu, Hawaii

Scale: 1 inch = 200 feet

TAX MAP 8-9-02; Por. 1

C.S.F. NO. 23,049

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

E.T. Nov. 28, 2000

EXHIBIT "A"



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU

C.S.F. No. 23,049

November 28, 2000

PORTIONS OF THE  
FORMER NANAKULI MILITARY RESERVATION  
(CAMP ANDREWS)

PARCELS 1 ~~AND 2~~

Nanakuli, Waianae, Oahu, Hawaii

Being portions of the Government (Crown) Land of Nanakuli set aside as Nanakuli Military Reservation (Camp Andrews) by Presidential Executive Order 2564 dated March 28, 1917, amended by Presidential Executive Order 4504 dated September 4, 1926 and subsequently conveyed to the State of Hawaii by the United States of America by deed dated December 18, 1962 and recorded in Liber 4427, Page 279 (LOD S-19823).

PARCEL 1

Beginning at the south corner of this parcel of land and on the northwest corner of the intersection of Farrington Highway, Federal Aid Project No. 4-A and a 10-foot Right-of-Way of Nanakuli Residence Lots, First Series, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NANAKULI" being 3155.42 feet South and 538.42 feet West, thence running by azimuths measured clockwise from True South:-

- |             |  |
|-------------|--|
| 1. 134° 44' | 716.37 feet along the northeast side of Farrington Highway, Federal Aid Project No. 4-A; |
| 2. 234° 26' | 68.96 feet along Nanakuli Flood Control Project;   |
| 3. 134° 54' | 3.01 feet along Nanakuli Flood Control Project;  |
| 4. 224° 54' | 18.04 feet along Nanakuli Flood Control Project;   |

PRELIM APPRO'D  
Department of the  
Attorney General

EXHIBIT "B"  
(page 1 of 4)

November 28, 2000

5. Thence along Nanakuli Flood Control Project on a curve to the right with a radius of 174.46 feet, the chord azimuth and distance being:  
246° 49' 130.24 feet;
6. 268° 44' 166.99 feet along Nanakuli Flood Control Project;
7. Thence along Nanakuli Flood Control Project on a curve to the left with a radius of 1065.54 feet, the chord azimuth and distance being:  
259° 41' 30" 334.90 feet;
8. 250° 39' 492.84 feet along Nanakuli Flood Control Project;
9. Thence along Nanakuli Flood Control Project on a curve to the left with a radius of 320.54 feet, the chord azimuth and distance being:  
242° 08' 14" 94.90 feet;
10. 314° 44' 223.04 feet along Lot 142-B-1 of Nanakuli Residence Lots, First Series;
11. 50° 34' 1141.03 feet along the northwest side of a 10-foot Right-of-Way of Nanakuli Residence Lots, First Series to the point of beginning and containing an AREA OF 11.96 ACRES.

~~PARCEL 2~~**NOTE:**

Parcel 2 is not a part of General Lease

No. 281.

~~Beginning at the southwest corner of this parcel of land, at the southeast corner of Nanakuli IV Elementary School and on the north side of Nanakuli Flood Control Project, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NANAKULI" being 2308.09 feet South and 22.08 feet West, thence running by azimuths measured clockwise from True South:-~~

1. 134° 44' 374.45 feet along Nanakuli IV Elementary School;
2. 224° 44' 169.80 feet along Nanakuli IV Elementary School;

EXHIBIT "B"  
(page 2 of 4)

November 28, 2000

3.  $314^{\circ} 44'$  446.21 feet along Lots 266-B, 265-B, 264, 263-A and 263-B of Nanakuli Residence Lots, First Series;

4. Thence along Nanakuli Flood Control Project on a curve to the right with a radius of 270.54 feet, the chord azimuth and distance being:  
 $62^{\circ} 58' 05''$  72.33 feet;

5.  $70^{\circ} 39'$

112.40 feet along Nanakuli Flood Control Project to the point of beginning and containing an AREA OF 1.61 ACRES.

**NOTE:** Easement described below is not a part of General Lease No. 281.

together with a Perpetual Non-Exclusive Easement for Access Purposes over and across Nanakuli IV Elementary School as shown on plan attached hereto and made a part hereof and more particularly described as follows:

Beginning at the east corner of this easement being also the end of Course 2 of the above-described Parcel 2 of the Former Nanakuli Military Reservation (Camp Andrews), thence running by azimuths measured clockwise from True South:-

1.  $44^{\circ} 44'$  34.00 feet along Parcel 2 of the Former Nanakuli Military Reservation (Camp Andrews);  
 2.  $134^{\circ} 44'$  88.00 feet;  
 3.  $224^{\circ} 44'$  34.00 feet;

RECEIVED  
 Department of the  
 Interior



November 28, 2000

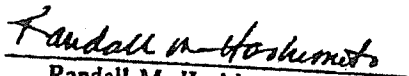
~~4. 314° 44' 88.00 feet along Lot 266 A of Nanakuli Residence  
Lots, First Series to the point of beginning  
and containing an AREA OF 0.069  
ACRE.~~

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By: 

Stanley T. Hasegawa  
Licensed Land Surveyor No. 3632 gm

Reviewed and Approved by:

  
Randall M. Hashimoto  
State Land Surveyor

Compiled from CSFs 14297,  
19789, File Plan 1783, H.H.  
Oahu File Folder A-1, Plat  
19.1(B)H.H. and other Govt.  
Survey Records,  
TMK: 8-9-02:por. 1

**EXHIBIT "C"**

**MEMORANDUM OF LEASE**

**SHORT FORM LEASE**

LAND COURT  
RETURN BY (X) MAIL ( ) PICK-UP

REGULAR SYSTEM

TMK No.: (1) 8-9-002:001

This document contains 5 pages

**MEMORANDUM OF LEASE**

**THIS MEMORANDUM OF LEASE** ("Memorandum") is made and entered into as of January 1, 2008 by and between the State of Hawaii, by its **DEPARTMENT OF HAWAIIAN HOME LANDS**, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii, 96707, and post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called "LESSOR," and Nanakuli Hawaiian Homestead Community Association, whose business and mailing address is 89-188 Farrington Highway, Waianae, Hawaii 96792, hereinafter called "LESSEE.

1. **TERM AND PREMISES.** For a lease term commencing on January 1<sup>st</sup>, 2008, and ending as of midnight on December 31<sup>st</sup>, 2073, upon the provisions set forth in that certain written lease of even date herewith from LESSOR to LESSEE ("Lease"), all of which provisions are specifically made a part hereof as though fully and completely set forth herein, LESSOR leases to LESSEE, and LESSEE leases from LESSOR, that certain real property ("Premises") located at the Former Camp Andrews Site, Nanakuli, Island of Oahu, Hawaii, comprising 11.96 acres, more or less, of Hawaiian home lands, more particularly described in Exhibit "A" together with all rights of ingress and egress and all other rights appurtenant to said Premises including, without limitation, the right to use the building to be constructed on the

Premises for the purposes contemplated in the Lease, all of which rights are more particularly described in the Lease.

2. **USE.** LESSEE is granted the right to use the Premises for Constructing a Commercial Shopping Center, a Hawaiian Cultural Center, and Rental Housing.

3. **PURPOSE OF MEMORANDUM OF LEASE.** This Memorandum is prepared for the purpose of providing for record notice of the Lease, and in no way modifies the express and particular provisions of the Lease.

4. **FOR THE BENEFIT OF THE PREMISES.** LESSOR and LESSEE intend that the covenants, conditions and restrictions described and referred to herein shall be both personal to LESSOR and LESSEE and binding on their successors and assigns. Each successive owner of the Premises or of any portion thereof, and each person having any interest therein derived through any owner thereof, shall be bound by such covenants, conditions and restrictions for the benefit of the Premises.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

APPROVED BY THE HHC  
AT ITS MEETING HELD ON  
November 20, 2007

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General  
State of Hawaii

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

By \_\_\_\_\_  
Micah A. Kane, Chairman  
Hawaiian Homes Commission  
LESSOR

NANAKULI HAWAIIAN HOMESTEAD  
COMMUNITY ASSOCIATION,  
a Hawaii Non-Profit Corporation

By \_\_\_\_\_  
Kamaki Kanahele, President  
LESSEE

**EXHIBIT "A"**

## Anahola Solar Project – Summary

### 25 – Year License to HCDC and KIUC

- ✓ 55 Acre – Solar Farm (\$70 Million) – Today's submission
- ✓ 5 Acre – Service Center and Community Offices (\$3 Million) – Future

### Qualify 55 Acres and Project for Federal/State Energy Tax Credits

- ✓ \$12 Million 1603 Federal Investment Tax Credits (deadline 12/30/11)
- ✓ \$9 Million in State of Hawaii Energy Tax Credits
- ✓ Required to spend 5% of total project by 12/30/11 (\$3.5 Million)

### Complete Required Due Diligence

- ✓ Complete Environment Assessment
- ✓ Procure Construction Bids and Select
- ✓ Finalize Permits and Financing Terms

### Homestead Benefits Agreement

- ✓ Coordinate and Conduct Broad Consultation
- ✓ Finalize Homestead Benefits Agreement based on input

### 25 – Year General Lease to HCDC

- ✓ Cancel License and Replace with General Lease to only HCDC
- ✓ Incorporate Homestead Benefits Agreement as part of Lease
- ✓ Authorization to Sublease to LLC to be formed for Solar Project

### Close on Interim Construction Financing

- ✓ Perfect Liens and Satisfy Lender Requirements
- ✓ Open Access to \$70 Million Interim Loan

### Construct Solar Project & Operate

- ✓ Complete Construction and Close on Term Financing/Tax Credits
- ✓ Land Lease Payments at Market Value Begin (80/20 Share DHHL/HCDC)
- ✓ Homestead Benefits Agreement In Full Operation

HHC Item No. F-3  
Exhibit B  
Date 10-17-11